



2016/0288(COD)

17.3.2017

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DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council establishing the European Electronic Communications Code (EECC) (recast) (COM(2016)590 – C8-0379/2016 – 2016/0288(COD))

Committee on Industry, Research and Energy

Rapporteur: Pilar del Castillo Vera

(Recast – Rule 104 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council establishing the European Electronic Communications Code (EECC) (recast) (COM(2016)590 – C8-0379/2016 – 2016/0288(COD))

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)590),
 - having regard to Article 294(2) and Article xx of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0379/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 26 January 2017¹,
 - having regard to the opinion of the Committee of the Regions of 8 February 2017²,
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts³,
 - having regard to Rules 104 and 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy (A8-0000/2017),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the Commission proposal does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the

¹ OJ C xx, 2.3.2017, p. xx.

² OJ C xx, 2.3.2017, p. xx.

³ OJ C 77, 28.3.2002, p. 1.

European Parliament, the Council and the Commission;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive Recital 13

Text proposed by the Commission

(13) The requirements concerning the capabilities of electronic communications networks are constantly increasing. While in the past the focus was mainly on growing bandwidth available overall and to each individual user, other parameters like latency, availability and reliability are becoming increasingly important. The current response towards this demand is bringing optical fibre closer and closer to the user and future 'very high capacity networks' ***will require performance parameters which are equivalent to what a network based on optical fibre elements at least up to the distribution point at the serving location can deliver. This corresponds in the fixed-line connection case to network performance equivalent to what is achievable by an optical fibre installation up to a multi-dwelling building, considered as the serving location, and in the mobile connection case to network performance similar to what is achievable based on an optical fibre installation up to the base station, considered as the serving location.*** Variations in end-users' experience which are due to the different characteristics of the medium by which the network ultimately connects with the network termination point ***should not be taken into account for the purposes of establishing whether or not a wireless network could***

Amendment

(13) The requirements concerning the capabilities of electronic communications networks are constantly increasing. While in the past the focus was mainly on growing bandwidth available overall and to each individual user, other parameters like latency, availability and reliability are becoming increasingly important. The current response towards this demand ***for unconstrained use*** is bringing optical fibre closer and closer to the user. ***By 2025, all physical places or online hubs where people gather or visit to learn, to work and to access public services, and where a single connection provides Internet to multiple users, such as schools, transport hubs, main providers of public services, and digitally intensive enterprises, should have cost-effective access to Gigabit connectivity, and should serve as demand factors for the provision of such connectivity throughout their communities.*** Future 'very high capacity networks' ***will require performance parameters that are capable of at least delivering the EU connectivity goals of [100]Mbps downlink promptly upgradable to gigabit speeds and contribute to achieve continuous 5G coverage not taking into account variations in*** end-users' experience which are due to the different characteristics of the medium by which the network ultimately connects with the

be considered as providing similar network performance. In accordance with the principle of technological neutrality, *other* technologies *and* transmission media should *not* be excluded, where *they compare with this baseline scenario in terms of their capabilities.* The roll-out of such 'very high capacity networks' will further increase the capabilities of networks and pave the way for the roll-out of future mobile network generations based on enhanced air interfaces and a more densified network architecture.

network termination point. In accordance with the principle of technological neutrality, *no* technologies *or* transmission media should be excluded, where *their capabilities meet the criteria for 2025 and evolving demand thereafter.* The roll-out of such 'very high capacity networks' will further increase the capabilities of networks and pave the way for the roll-out of future mobile network generations based on enhanced air interfaces and a more densified network architecture. *In order to ensure that the criteria for very high capacity networks continue to dynamically meet demand for unconstrained use, by all categories of users after 2025, BEREC should evaluate developments of demand and issue guidelines to determine the criteria to be applied by national regulatory authorities when performing their tasks with respect to very high capacity networks.*

Or. en

Amendment 2

Proposal for a directive Recital 23

Text proposed by the Commission

(23) *In order to translate the political aims of the Digital Single Market strategy into regulatory terms,* the framework should, in addition to the existing three primary objectives of promoting competition, internal market and end-user interests, pursue an additional **connectivity** objective, articulated in terms of outcomes: widespread access to and take-up of very high capacity **fixed and mobile connectivity** for all Union citizens and businesses on the basis of reasonable price and choice, **enabled by** effective and fair competition, **by efficient investment and open innovation,** by efficient use of

Amendment

(23) The framework should, in addition to the existing three primary objectives of promoting competition, internal market and end-user interests, pursue an additional objective, articulated in terms of outcomes: widespread access to and take-up of very high capacity **networks** for all Union citizens and businesses. **Together with the existing general objectives, this will support the enhancement of the European economy and in particular its industry,** on the basis of reasonable price and choice, effective and fair competition, efficient use of spectrum, common rules and predictable regulatory approaches in the internal

spectrum, **by** common rules and predictable regulatory approaches in the internal market and **by** the necessary sector-specific rules to safeguard the interests of citizens. For the Member States, the national regulatory authorities and other competent authorities and the stakeholders, that connectivity objective translates on the one hand into aiming for the highest capacity networks and services economically sustainable in a given area, and on the other hand into pursuing territorial cohesion, in the sense of convergence in capacity available in different areas.

market and the necessary sector-specific rules to safeguard the interests of citizens. For the Member States, the national regulatory authorities and other competent authorities and the stakeholders, that connectivity objective translates on the one hand into aiming for the highest capacity networks and services economically sustainable in a given area, and on the other hand into pursuing territorial cohesion, in the sense of convergence in capacity available in different areas.

Progress towards the achievement of the general objectives of this Directive should be supported by a robust system of continuous assessment and benchmarking of Member States with respect to the availability of very high capacity connectivity in all major socio-economic drivers such as schools, transport hubs and major providers of public services, and highly digitized business, uninterrupted 5G coverage for urban areas and major terrestrial transport paths and the availability of electronic communications networks which are capable to provide at least 100 Mbps downlink, and which are promptly upgradeable to gigabit speeds, to all households in each Member State. To that end, the Commission should promptly present a legislative proposal, which should include detailed policy orientations, establish methods and objective, concrete and quantifiable criteria for benchmarking the effectiveness of Member State measures towards achieving those objectives and identify best practices, as well as providing for a yearly qualitative and quantitative assessment of the state of progress of each Member State.

Or. en

Justification

A mechanism for measuring and benchmarking Member State progress with respect to the general objectives should be established, which among other things requires the setting of objective, concrete and quantifiable criteria.

Amendment 3

Proposal for a directive

Recital 24

Text proposed by the Commission

(24) The principle that Member States should apply EU law in a technologically neutral fashion, that is to say that a national regulatory or other competent authority neither imposes nor discriminates in favour of the use of a particular type of technology, does not preclude the taking of proportionate steps to promote certain specific services where this is justified in order to attain the objectives of the regulatory framework, for example digital television as a means for increasing spectrum efficiency. Furthermore, it does not preclude taking into account *that certain transmission media have* physical characteristics and architectural features *that can be superior in terms of quality of service, capacity, maintenance cost, energy efficiency, management flexibility, reliability, robustness and scalability, and ultimately in terms of performance, which can be reflected in actions taken in view of pursuing the various regulatory objectives.*

Amendment

(24) The principle that Member States should apply EU law in a technologically neutral fashion, that is to say that a national regulatory or other competent authority neither imposes nor discriminates in favour of the use of a particular type of technology, does not preclude the taking of proportionate steps to promote certain specific services where this is justified in order to attain the objectives of the regulatory framework, for example digital television as a means for increasing spectrum efficiency. Furthermore, it does not preclude taking into account *differing* physical characteristics and architectural features *of electronic communications networks of relevance for other objectives of the framework.*

Or. en

Amendment 4

Proposal for a directive

Recital 40

Text proposed by the Commission

(40) The benefits of the single market to service providers and end-users can be best achieved by general authorisation of electronic communications networks and of electronic communications services ***other than number-independent interpersonal communications services***, without requiring any explicit decision or administrative act by the national regulatory authority and by limiting any procedural requirements to a declaratory notification only. Where Member States require notification by providers of electronic communications networks or services when they start their activities, this notification should be submitted to BEREC which acts as a single contact point. Such notification should not entail administrative cost for the providers and could be made available via an entry point at the website of the national regulatory authorities. BEREC should forward in good time the notifications to the national regulatory authority in all Member States in which the providers of electronic communications networks or services intend to provide electronic communications networks or services. Member States can also require proof that notification was made by means of any legally recognised postal or electronic acknowledgement of receipt of the notification to BEREC. Such acknowledgement should in any case not consist of or require an administrative act by the national regulatory authority, or any other authority.

Amendment

(40) The benefits of the single market to service providers and end-users can be best achieved by general authorisation of electronic communications networks and of electronic communications services, without requiring any explicit decision or administrative act by the national regulatory authority and by limiting any procedural requirements to a ***single*** declaratory notification only. Where Member States require notification by providers of electronic communications networks or services when they start their activities, this ***single*** notification should be submitted to BEREC which acts as a single contact point. Such notification should not entail administrative cost for the providers and could be made available via an entry point at the website of the national regulatory authorities. BEREC should forward in good time the notifications to the national regulatory authority in all Member States in which the providers of electronic communications networks or services intend to provide electronic communications networks or services. Member States can also require proof that notification was made by means of any legally recognised postal or electronic acknowledgement of receipt of the notification to BEREC. Such acknowledgement should in any case not consist of or require an administrative act by the national regulatory authority, or any other authority.

Or. en

Amendment 5

Proposal for a directive

Recital 42

Text proposed by the Commission

(42) ***Contrary to the other categories of electronic communications networks and services as defined in this Directive, number-independent interpersonal communications services do not benefit from the use of public numbering resources and do not participate in a publicly assured interoperable ecosystem. It is therefore not appropriate to subject these types of services to the general authorisation regime***

Amendment

(42) ***A provider of any electronic communications services should be able to benefit from the general authorisation regime.***

Or. en

Amendment 6

Proposal for a directive

Recital 53

Text proposed by the Commission

(53) Member States may need to amend rights, conditions, procedures, charges and fees relating to general authorisations and rights of use where this is objectively justified. Such changes should be duly notified to all interested parties in good time, giving them adequate opportunity to express their views on any such amendments. Taking into account the need to ensure legal certainty and to promote regulatory predictability, any restriction or withdrawal of existing rights of use for radio spectrum or to install facilities should be subject to predictable and transparent procedures; hence stricter requirements or a notification mechanism could be imposed where rights of use have been assigned pursuant to competitive or comparative

Amendment

(53) Member States may need to amend rights, conditions, procedures, charges and fees relating to general authorisations and rights of use where this is objectively justified. Such changes should be duly notified to all interested parties in good time, giving them adequate opportunity to express their views on any such amendments. Taking into account the need to ensure legal certainty and to promote regulatory predictability, any restriction or withdrawal of existing rights of use for radio spectrum or to install facilities should be subject to predictable and transparent procedures; hence stricter requirements or a notification mechanism could be imposed where rights of use have been assigned pursuant to competitive or comparative

procedures. Unnecessary procedures should be avoided in case of minor amendments to existing rights to install facilities or to use spectrum when such amendments do not impact on third parties' interests. The change in the use of spectrum as a result of the application of technology and service neutrality principles should not be considered a sufficient justification for a withdrawal of rights since it does not constitute the granting of a new right.

procedures. ***Furthermore, in the case of individual rights of use for radio spectrum, the rights and conditions of such licenses should only be amended with the prior consent of the right holder. As restrictions or withdrawals of general authorisations or rights may have significant and unpredictable consequences for their holders, national competent authorities should take particular care and assess in advance the potential harm that such measures may cause before adopting such measures.***

Unnecessary procedures should be avoided in case of minor amendments to existing rights to install facilities or to use spectrum when such amendments do not impact on third parties' interests. The change in the use of spectrum as a result of the application of technology and service neutrality principles should not be considered a sufficient justification for a withdrawal of rights since it does not constitute the granting of a new right.

Or. en

Amendment 7

Proposal for a directive

Recital 60

Text proposed by the Commission

(60) Electronic communications broadband networks are becoming increasingly diverse in terms of technology, topology, medium used and ownership, therefore, regulatory intervention must rely on detailed information ***and forecasts*** regarding network roll-out in order to be effective and to target the areas where it is needed. That information should include ***plans*** regarding both deployment of very high capacity networks, as well as significant upgrades or extensions of existing copper

Amendment

(60) Electronic communications broadband networks are becoming increasingly diverse in terms of technology, topology, medium used and ownership, therefore, regulatory intervention must rely on detailed information regarding network roll-out in order to be effective and to target the areas where it is needed. That information should include ***surveys*** regarding both deployment of very high capacity networks, as well as significant upgrades or extensions of existing copper or other networks which

or other networks which might not match the performance characteristics of very high capacity networks in all respects, such as roll-out of fibre to the cabinet coupled with active technologies like vectoring. The level of detail and territorial granularity of the information that national regulatory authorities should gather should be guided by the specific regulatory objective, and should be adequate for the regulatory purposes that it serves. Therefore, the size of the territorial unit will also vary between Member States, depending on the regulatory needs in the specific national circumstances, and on the availability of local data. Level 3 in the Nomenclature of Territorial Units for Statistics (NUTS) is unlikely to be a sufficiently small territorial unit in most circumstances. National regulatory authorities should be guided by BEREC guidelines on best practice to approach such a task, and such guidelines will be able to rely on the existing experience of national regulatory authorities in conducting geographical surveys of networks roll-out. National regulatory authorities should make available tools to end-users as regards quality of service to contribute towards the improvement of their awareness of the available connectivity services.

might not match the performance characteristics of very high capacity networks in all respects, such as roll-out of fibre to the cabinet coupled with active technologies like vectoring. The level of detail and territorial granularity of the information that national regulatory authorities should gather should be guided by the specific regulatory objective, and should be adequate for the regulatory purposes that it serves. Therefore, the size of the territorial unit will also vary between Member States, depending on the regulatory needs in the specific national circumstances, and on the availability of local data. Level 3 in the Nomenclature of Territorial Units for Statistics (NUTS) is unlikely to be a sufficiently small territorial unit in most circumstances. National regulatory authorities should be guided by BEREC guidelines on best practice to approach such a task, and such guidelines will be able to rely on the existing experience of national regulatory authorities in conducting geographical surveys of networks roll-out. National regulatory authorities should make available tools to end-users as regards quality of service to contribute towards the improvement of their awareness of the available connectivity services. ***Where national regulatory authorities deem it appropriate, they may also collect publicly available information on plans to deploy very high capacity networks.***

Or. en

Amendment 8

Proposal for a directive Recital 61

Text proposed by the Commission

(61) In the case of specific and well defined digital exclusion areas, national

Amendment

(61) In the case of specific and well defined digital exclusion areas, national

regulatory authorities should have the possibility to organise a call for declarations of interest with the aim of identifying undertakings that are willing to invest in very high capacity networks. In the interests of predictable investment conditions, national regulatory authorities should be able to share information with undertakings expressing interest in deploying very high-speed networks on whether other types of network upgrades, including those below 100 Mbps download speed, are present *or foreseen* in the area in question.

regulatory authorities should have the possibility to organise a call for declarations of interest with the aim of identifying undertakings that are willing to invest in very high capacity networks. In the interests of predictable investment conditions, national regulatory authorities should be able to share information with undertakings expressing interest in deploying very high-speed networks on whether other types of network upgrades, including those below 100 Mbps download speed, are present in the area in question.

Or. en

Amendment 9

Proposal for a directive Recital 67

Text proposed by the Commission

(67) Lack of coordination between Member States *when organising the use of spectrum in their territory can create* large-scale interference issues severely *impacting* the development of the Digital Single Market. Member States should *take all necessary measures to avoid cross-border and harmful interference and cooperate with each other to that end. Upon request of one or more Member States or of the Commission, the Radio Spectrum Policy Group* should be *tasked with supporting the necessary cross-border coordination. Building on RSPG's proposed solution, an implementing measure may be required in some circumstances to definitively resolve cross-border interferences or to enforce under Union law a coordinated solution agreed by two or several Member States in bilateral negotiations.*

Amendment

(67) Lack of coordination between Member States *with respect to their approaches to the assignment and authorisation of radio spectrum as well as with respect to* large-scale interference issues *can* severely *impact* the development of the Digital Single Market. Member States should *therefore cooperate with each other taking full advantage of the good offices of the Radio Spectrum Policy Group (RSPG). Furthermore, coordination between* Member States *to resolve harmful interference should be made more efficient, by using the RSPG as a means to facilitate dispute resolution. Taking into account the Union's specific concerns and objectives preference should be given to such a Union process of dispute settlement on cross border issues between Member States, in priority to any dispute settlement under international law.*

Amendment 10**Proposal for a directive****Recital 68***Text proposed by the Commission*

(68) The Radio Spectrum Policy Group (RSPG) is a Commission high-level advisory group which was created by Commission Decision 2002/622/EC³⁰ to contribute to the development of the internal market and to support the development of a Union-level radio spectrum policy, taking into account economic, political, cultural, strategic, health and social considerations, as well as technical parameters. It should be composed of the heads of the bodies that have overall political responsibility for strategic spectrum policy. It should advise the ***Commission in developing strategic objectives, priorities and roadmaps for spectrum policy.*** This should further increase the visibility of spectrum policy in the various EU policy areas and help to ensure cross-sectorial coherence at national and Union level. It should also provide advice to the European Parliament and the Council upon their request. Moreover, the RSPG should also be the forum for the coordination of implementation by Member States of their obligations related to radio spectrum under this Directive and should play a central role in fields essential for the internal market such as cross-border coordination or standardisation. Technical or expert working groups could also be created to assist plenary meetings, at which strategic policy is framed through senior-level representatives of the Member States and the Commission.

Amendment

(68) The Radio Spectrum Policy Group (RSPG) is ***currently*** a Commission high-level advisory group which was created by Commission Decision 2002/622/EC³⁰ to contribute to the development of the internal market and to support the development of a Union-level radio spectrum policy, taking into account economic, political, cultural, strategic, health and social considerations, as well as technical parameters. ***For the purposes of its role in the further strengthening of cooperation between Member States it should be established in this Directive.*** It should be composed of the heads of the bodies that have overall political responsibility for strategic spectrum policy. It should ***assist and*** advise the ***Member States and the Commission with respect to*** spectrum policy. This should further increase the visibility of spectrum policy in the various EU policy areas and help to ensure cross-sectorial coherence at national and Union level. It should also provide advice to the European Parliament and the Council upon their request. Moreover, the RSPG should also be the forum for the coordination of implementation by Member States of their obligations related to radio spectrum under this Directive and should play a central role in fields essential for the internal market such as cross-border coordination or standardisation. Technical or expert working groups could also be created to assist plenary meetings, at which strategic policy is framed through senior-level representatives of the Member States and the Commission.

³⁰ Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group (OJ L 198, 27/07/2002, p. 49).

³⁰ Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group (OJ L 198, 27/07/2002, p. 49).

Or. en

Amendment 11

Proposal for a directive Recital 95

Text proposed by the Commission

(95) ***In line with their role of ensuring optimal use of radio spectrum, fees linked to rights of use for radio spectrum can influence decisions about whether to seek such rights and put into use radio spectrum resources. When setting reserve prices as a means to determine the minimum valuation ensuring optimal use, Member States should therefore ensure that such prices, irrespective of the type of selection procedure used, also reflect the additional costs associated with the fulfilment of authorisation conditions imposed to further policy objectives that would not reasonably be expected to be met pursuant to normal commercial standards, such as territorial coverage conditions. In doing so, regard should also be had to the competitive situation of the market concerned.***

Amendment

(95) ***Fees imposed on undertakings for rights of use for radio spectrum can influence decisions about whether to seek such rights and how to make the best use of radio spectrum resources. With a view to ensuring optimal use, when setting reserve prices Member States should therefore ensure that they reflect the alternative use of the resource and the additional costs associated with the fulfilment of authorisation conditions imposed to further policy objectives that would not reasonably be expected to be met pursuant to normal commercial standards, such as territorial coverage conditions.***

Or. en

Amendment 12

Proposal for a directive Recital 96

Text proposed by the Commission

(96) Optimal use of radio spectrum

Amendment

(96) Optimal use of radio spectrum

resources depends on the availability of appropriate networks and associated facilities. In that regard, fees for rights of use for radio spectrum and for rights to install facilities should take into consideration the need to facilitate continuous infrastructure development with a view to achieving the most efficient use of the resources. Member States should therefore provide for modalities for payment of the fees for rights of use for radio spectrum linked with the actual availability of the resource in a manner that facilitates the investments necessary to promote such development. The modalities should be specified in an objective, transparent, proportionate and non-discriminatory manner before opening procedures for the granting of rights of use for spectrum.

resources depends on the availability of appropriate networks and associated facilities. In that regard, fees for rights of use for radio spectrum and for rights to install facilities should take into consideration the need to facilitate continuous infrastructure development with a view to achieving the most efficient use of the resources. Member States should therefore provide for modalities for payment of the fees for rights of use for radio spectrum linked with the actual availability of the resource in a manner that facilitates the investments necessary to promote such development. The modalities should be specified in an objective, transparent, proportionate and non-discriminatory manner before opening procedures for the granting of rights of use for spectrum *and the fees clearly defined*.

Or. en

Justification

The text seeks to further increase certainty with respect to investment needs

Amendment 13

Proposal for a directive

Recital 103

Text proposed by the Commission

(103) Ensuring ***ubiquitous connectivity*** in each Member State is essential for economic and social development, participation in public life and social and territorial cohesion. As ***connectivity*** becomes an integral element to European society and welfare, EU-wide coverage should be achieved by relying on imposition by Member States of appropriate coverage requirements, which should be adapted to each area served and limited to proportionate burdens in order not to hinder deployment by service

Amendment

(103) Ensuring ***maximum coverage of the highest capacity networks*** in each Member State is essential for economic and social development, participation in public life and social and territorial cohesion. As ***use of electronic communications*** becomes an integral element to European society and welfare, EU-wide coverage should be achieved by relying on imposition by Member States of appropriate coverage requirements, which should be adapted to each area served and limited to proportionate burdens in order

providers. Coverage of the territory *as well as connectivity across Member States* should be maximised and reliable, with a view to promote *in-border and cross-border* services and applications such as connected cars and e-health. Therefore, *in order to increase regulatory certainty and predictability of investment needs and to guarantee proportionate and equitable connectivity for all citizens*, application by competent authorities of coverage obligations should be coordinated at Union level. Considering national specificities, such coordination should be limited to general criteria to be used to define and measure coverage obligations, such as population density or topographical and topological features.

not to hinder deployment by service providers. *Seamless* coverage of the territory should be maximised and reliable, with a view to promote services and applications such as connected cars and e-health. Therefore, application by competent authorities of coverage obligations should be coordinated at Union level. Considering national specificities, such coordination should be limited to general criteria to be used to define and measure coverage obligations, such as population density or topographical and topological features.

Or. en

Justification

Here, as elsewhere, there should be no confusion caused by the use of the vague "connectivity" in cases where a specific meaning is intended or where more precise usage is otherwise required. In this case, the text addresses territorial coverage, and is amended accordingly. Furthermore, "ubiquitous connectivity" implies complete coverage, which can be quite different from the appropriate coverage requirements, limitation to proportional burden etc outlined in the text.

Amendment 14

Proposal for a directive Recital 104

Text proposed by the Commission

(104) The need to ensure that citizens are not exposed to electromagnetic fields at a level harmful to public health should be approached in a consistent way across the Union, having particular regard to the precautionary approach taken in Council Recommendation No 1999/519/EC³⁴, in order to ensure consistent deployment conditions.

Amendment

(104) The need to ensure that citizens are not exposed to electromagnetic fields at a level harmful to public health should be approached in a consistent way across the Union, having particular regard to the precautionary approach taken in Council Recommendation No 1999/519/EC³⁴, in order to ensure consistent deployment conditions. ***With respect to very high capacity networks, Member States should***

apply the procedure set out in Directive 2015/1525 where relevant with a view also to providing transparency to stakeholders and to allow other Member States and the Commission to react.

³⁴ Council Recommendation 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz), OJ L 199, 30.7.1999, p. 59–70.

³⁴ Council Recommendation 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz), OJ L 199, 30.7.1999, p. 59–70.

Or. en

Amendment 15

Proposal for a directive Recital 113 a (new)

Text proposed by the Commission

Amendment

(113 a) Individual rights of use for spectrum are likely to be the most appropriate authorisation regime in the presence of certain circumstances. For instance, individual rights of use should be considered when favourable propagation characteristics of the radio spectrum or the envisaged power level of the transmission makes this a more efficient use. This should also be the case where the geographical density of use is high or where radio spectrum is continuously in use. Another situation where individual rights of use should be considered is where the required quality of service prevents general authorisations from addressing the interference concerns. Where technical measures to improve receiver resilience can enable the use of general authorisations or enable spectrum sharing, these should be applied and the systematic recourse to non-protection, non-interference provisions should be avoided.

Justification

The recital sets out explicitly under which circumstances individual rights of use for radio spectrum is the most appropriate authorisation regime (thus giving greater assurance that general or sharing provisions are more focused on new higher bands), while also pointing to efforts to promote technical measures to improve receiver resilience. Inextricably linked to other admissible AMs.

Amendment 16

Proposal for a directive **Recital 125**

Text proposed by the Commission

(125) Building on opinions from the RSPG, the adoption of a common deadline for allowing the use of a band which has been harmonised under the Radio Spectrum Decision can be necessary to avoid cross-border interferences and beneficial to ensure release of the full benefits of the related technical harmonisation measures for equipment markets and for the deployment of very high capacity electronic communications networks and services. In order to significantly contribute to the objectives of this framework and facilitate coordination, the establishment of such common deadlines should be subject to Commission implementing acts.

Amendment

(125) Building on opinions from the RSPG, the adoption of a common deadline for allowing the use of a band which has been harmonised under the Radio Spectrum Decision can be necessary to avoid cross-border interferences and beneficial to ensure release of the full benefits of the related technical harmonisation measures for equipment markets and for the deployment of very high capacity electronic communications networks and services. In order to significantly contribute to the objectives of this framework and facilitate coordination, the establishment of such common deadlines should be subject to Commission implementing acts. ***In addition to the 700 MHz band, such common maximum deadlines could in particular cover spectrum in the 3.4-3.8 GHz and the 24.25-27.5 GHz bands which have been identified by the RSPG in its opinion on spectrum related aspects for next-generation wireless systems (5G) as 'pioneer' bands for use by 2020, as well as additional bands above 24 GHz which the RSPG considers potentially usable for 5G in Europe such as 31.8-33.4 GHz and 40.5-43.5 GHz. Assignment conditions in***

additional bands above 24 GHz should take into account potential spectrum sharing scenarios with incumbent users.

Or. en

Justification

To highlight the spectrum bands of most immediate importance to the roll-out of new advanced mobile networks.

Amendment 17

**Proposal for a directive
Recital 128 a (new)**

Text proposed by the Commission

Amendment

(128 a) Public buildings and other public infrastructure are visited and used daily by a significant number of end-users who need connectivity to consume eGovernance, eTransport and other services. Other public infrastructure (such as street lamps, traffic lights, etc.) offer very valuable sites for deploying small cells due to their density, etc. Operators should have access to these public sites for the purpose of adequately serving demand. For this reason Member States should ensure that such public buildings and other public infrastructure are made available on reasonable conditions for the deployment of small-cells with a view to complement the Broadband Cost Reduction Directive 2014/61/EU. The latter follows a functional approach and imposes obligations of access to physical infrastructure only when the latter is part of a network and only if it is owned or used by a network operator, thereby leaving many buildings owned or used by public authorities outside its scope. On the contrary, a specific obligation is not necessary for physical infrastructure, such as ducts or poles, used for intelligent transport systems (ITS), which are owned

by network operators (providers of transport services and/or providers of public communications networks), and host parts of a network, thus falling within the scope of Directive 2014/61/EU.

Or. en

Justification

Inextricably linked to other admissible amendments.

Amendment 18

**Proposal for a directive
Recital 141**

Text proposed by the Commission

(141) In such cases, in order to comply with the principle of proportionality, it can be appropriate for national regulatory authorities to exclude *certain categories of owners or undertakings, or both, from obligations going beyond the first distribution point, on the grounds that an access obligation not based on significant market power would risk compromising **their** business case for recently deployed network elements. **Structurally separated undertakings should not be subject to such access obligations if they offer an effective alternative access on a commercial basis to a very high capacity network.***

Amendment

(141) In such cases, in order to comply with the principle of proportionality, it can be appropriate for national regulatory authorities to exclude obligations going beyond the first distribution point, on the grounds that an access obligation not based on significant market power would risk compromising *the* business case for recently deployed network elements.

Or. en

Amendment 19

**Proposal for a directive
Recital 142**

Text proposed by the Commission

Amendment

(142) Sharing of passive or active infrastructure used in the provision of wireless electronic communications services, or the joint roll-out of such infrastructures, in compliance with competition law principles can be particularly useful to maximise very high capacity **connectivity** throughout the Union, especially in less dense areas where replication is impracticable and end-users risk being deprived of such **connectivity**. National regulatory authorities should, **exceptionally, be enabled to impose such** sharing or joint roll-out, or localised roaming access, in compliance with Union law, if they demonstrate the benefits of such sharing or access in terms of overcoming very significant barriers to replication and of addressing otherwise severe restrictions on end-user choice or quality of service, or both, or on territorial coverage, and taking into account several elements, including in particular the need to maintain infrastructure roll-out incentives.

deleted

Or. en

Amendment 20

**Proposal for a directive
Recital 146**

Text proposed by the Commission

Amendment

(146) There is a need for ex ante obligations in certain circumstances in order to ensure the development of a competitive market, the conditions of which favour the deployment and take-up of very high capacity **connectivity** and the maximisation of end-user benefits. The definition of significant market power used in this Directive is equivalent to the

(146) There is a need for ex ante obligations in certain circumstances in order to ensure the development of a competitive market, the conditions of which favour the deployment and take-up of very high capacity **networks** and the maximisation of end-user benefits. The definition of significant market power used in this Directive is equivalent to the

concept of dominance as defined in the case law of the Court of Justice.

concept of dominance as defined in the case law of the Court of Justice.

Or. en

Justification

In this case, "connectivity" clearly means "networks". Clarification is necessary as the text addresses obligations.

Amendment 21

Proposal for a directive

Recital 152

Text proposed by the Commission

Amendment

(152) In some circumstances geographic markets are defined as national or sub-national, for example due to the national or local nature of network roll-out which determines the boundaries of undertakings' potential market power in respect of wholesale supply, but there still is a significant transnational demand from one or more categories of end-users. That can in particular be the case for demand from business end-users with multisite facility operations in different Member States. If that transnational demand is not sufficiently met by suppliers, for example if they are fragmented along national borders or locally, a potential internal market barrier arises. Therefore, BEREC should be empowered to provide guidelines to national regulatory authorities on common regulatory approaches to ensure that transnational demand can be met in a satisfactory way, permitting efficiencies and economies of scale despite the fragmented supply side. BEREC's guidelines should shape the choices of national regulatory authorities in pursuing the internal market objective when imposing regulatory obligations on SMP operators at the national level.

deleted

Or. en

Justification

In accordance with amendment deleting Article 64.

Amendment 22

**Proposal for a directive
Recital 153**

Text proposed by the Commission

Amendment

(153) If national regulatory authorities have not followed the common approach recommended by BEREC to meet the identified transnational demand, with the consequence that transnational end-user demand is not efficiently met, and that avoidable barriers to the internal market arise, it could be necessary to harmonise the technical specifications of wholesale access products capable of meeting a given transnational demand, taking into account the BEREC guidelines.

deleted

Or. en

Justification

In accordance with amendment deleting Article 64.

Amendment 23

**Proposal for a directive
Recital 157**

Text proposed by the Commission

Amendment

(157) When assessing wholesale regulation to solve problems at the retail level, national regulatory authorities should take into account that several wholesale markets can provide wholesale upstream inputs for a particular retail market, and conversely, one wholesale market can provide wholesale upstream inputs for a variety of retail markets. Furthermore, competitive dynamics in a particular

(157) When assessing wholesale regulation to solve problems at the retail level, national regulatory authorities should take into account that several wholesale markets can provide wholesale upstream inputs for a particular retail market, and conversely, one wholesale market can provide wholesale upstream inputs for a variety of retail markets. Furthermore, competitive dynamics in a particular

market can be influenced by markets that are contiguous but not in a vertical relationship, such as can be the case between certain fixed and mobile markets. National regulatory authorities should conduct that assessment for each individual wholesale market considered for regulation, starting with remedies for access to civil infrastructure, as such remedies are usually conducive to more sustainable competition including infrastructure competition, and thereafter analysing any wholesale markets considered susceptible to ex ante regulation in order of their likely suitability to address identified competition problems at retail level. When deciding on the specific remedy to be imposed, national regulatory authorities should assess its technical feasibility and carry out a cost-benefit analysis, having regard to its degree of suitability to address the identified competition problems at retail level. National regulatory authorities should consider the consequences of imposing any specific remedy which, if feasible only on certain network topologies, could constitute a disincentive for the deployment of very high capacity networks in the interest of end-users. At each stage of the assessment, before the national regulatory authority determines whether any additional remedy should be imposed on the significant market power operator, it should seek to determine whether the *retail market concerned* would *be* effectively competitive *in the light of* any relevant commercial arrangements or other wholesale market circumstances, including other types of regulation already in force, such as for example general access obligations to non-replicable assets or obligations imposed pursuant to Directive 2014/61/EU, and of any regulation already deemed appropriate by the national regulatory authority for an operator with significant market power. Even if such differences do not result in the definition of distinct geographic markets, they may

market can be influenced by markets that are contiguous but not in a vertical relationship, such as can be the case between certain fixed and mobile markets. National regulatory authorities should conduct that assessment for each individual wholesale market considered for regulation, starting with remedies for access to civil infrastructure, as such remedies are usually conducive to more sustainable competition including infrastructure competition, and thereafter analysing any wholesale markets considered susceptible to ex ante regulation in order of their likely suitability to address identified competition problems at retail level. When deciding on the specific remedy to be imposed, national regulatory authorities should assess its technical feasibility and carry out a cost-benefit analysis, having regard to its degree of suitability to address the identified competition problems at retail level. National regulatory authorities should consider the consequences of imposing any specific remedy which, if feasible only on certain network topologies, could constitute a disincentive for the deployment of very high capacity networks in the interest of end-users. At each stage of the assessment, before the national regulatory authority determines whether any additional, *more burdensome*, remedy should be imposed on the significant market power operator, it should seek to determine whether the *remedies already considered* would *suffice to make the retail market concerned* effectively competitive, *taking into account also* any relevant commercial arrangements or other wholesale market circumstances, including other types of regulation already in force, such as for example general access obligations to non-replicable assets or obligations imposed pursuant to Directive 2014/61/EU, and of any regulation already deemed appropriate by the national regulatory authority for an operator with significant market power. Even if such

justify differentiation in the appropriate remedies imposed in the light of the differing intensity of competitive constraints.

differences do not result in the definition of distinct geographic markets, they may justify differentiation in the appropriate remedies imposed in the light of the differing intensity of competitive constraints. ***The obligations set out in Articles 67 to 75 of this Directive represent a scale of obligations ranking from the least burdensome, obligations of transparency, to the most burdensome, functional separation.***

Or. en

Amendment 24

Proposal for a directive Recital 162

Text proposed by the Commission

(162) However, in the interest of greater stability and predictability of regulatory measures, the maximum period allowed between market analyses should be extended from three to five years, provided market changes in the intervening period do not require a new analysis. In determining whether a national regulatory authority has complied with its obligation to analyse markets and notified the corresponding draft measure at a minimum every five years, only a notification including a new assessment of the market definition and of significant market power will be considered as starting a new five-year market cycle. A mere notification of new or amended regulatory remedies, imposed on the basis of a previous and unrevised market analysis will not be considered to have satisfied that obligation.

Amendment

(162) However, in the interest of greater stability and predictability of regulatory measures, the maximum period allowed between market analyses should be extended from three to five years ***in the case of stable or predictable markets***, provided market changes in the intervening period do not require a new analysis. In determining whether a national regulatory authority has complied with its obligation to analyse markets and notified the corresponding draft measure at a minimum every five years, only a notification including a new assessment of the market definition and of significant market power will be considered as starting a new five-year market cycle. A mere notification of new or amended regulatory remedies, imposed on the basis of a previous and unrevised market analysis will not be considered to have satisfied that obligation. ***In the case of dynamic markets the maximum period allowed for market analyses should however remain at three years. A market should be considered dynamic where the parameters used to***

determine whether to impose or remove obligations, including technological evolution and end-user demand patterns, are not unlikely to evolve in such a way that the conclusions of the analysis could change in periods of less than one year for a significant number of geographic areas representing at least 10% of the market.

Or. en

Amendment 25

Proposal for a directive Recital 166

Text proposed by the Commission

(166) Reviews of obligations imposed on operators designated as having significant market power during the timeframe of a market analysis should allow national regulatory authorities to take into account the impact on competitive conditions of new developments, for instance of newly concluded voluntary agreements between operators, such as access and co-investment agreements, thus providing the flexibility which is particularly necessary in the context of longer regulatory cycles. A similar logic should apply in case of unforeseeable termination of commercial agreements. If such termination occurs in a deregulated market, a new market analysis may be necessary.

Amendment

(166) Reviews of obligations imposed on operators designated as having significant market power during the timeframe of a market analysis should allow national regulatory authorities to take into account the impact on competitive conditions of new developments, for instance of newly concluded voluntary agreements between operators, such as access and co-investment agreements, thus providing the flexibility which is particularly necessary in the context of longer regulatory cycles. A similar logic should apply in case of unforeseeable termination of commercial agreements. If such termination occurs in a deregulated market, a new market analysis may be necessary. ***Equally, national regulatory authorities should be obliged to consider the effects of new developments on the request of an operator, including with respect to evaluating the impact of planned developments. Furthermore, in order to accelerate effectiveness of this Directive and align market reviews and their periodicity across the Union, national regulatory authorities should be obliged to reassess existing obligations on the basis of this Directive within a period***

of six months after the date for transposition set out herein. In addition, to avoid negative effects of market review cycles being delayed beyond the extension permissible under this Directive, any obligations imposed pursuant to a prior market review should lapse where the subsequent market review is not conducted in time.

Or. en

Amendment 26

Proposal for a directive Recital 172

Text proposed by the Commission

(172) Civil engineering assets that can host an electronic communications network are crucial for the successful roll-out of new **very high capacity** networks because of the high cost of duplicating them, and the significant savings that can be made when they can be reused. Therefore, in addition to the rules on physical infrastructure laid down in Directive 2014/61/EU, a specific remedy is necessary in those circumstances where civil engineering assets are owned by an operator designated with significant market power. Where civil engineering assets exist and are reusable, the positive effect of achieving effective access to them on the roll-out of competing infrastructure is very high, and it is therefore necessary to ensure that access to such assets can be used as a self-standing remedy for the improvement of competitive and deployment dynamics in any downstream market, to be considered before assessing the need to impose any other potential remedies, and not just as an ancillary remedy to other wholesale products or services or as a remedy limited to undertakings availing of such other wholesale products or services.

Amendment

(172) Civil engineering assets that can host an electronic communications network are crucial for the successful roll-out of new networks because of the high cost of duplicating them, and the significant savings that can be made when they can be reused. Therefore, in addition to the rules on physical infrastructure laid down in Directive 2014/61/EU, a specific remedy is necessary in those circumstances where civil engineering assets are owned by an operator designated with significant market power. Where civil engineering assets exist and are reusable, the positive effect of achieving effective access to them on the roll-out of competing infrastructure is very high, and it is therefore necessary to ensure that access to such assets can be used as a self-standing remedy for the improvement of competitive and deployment dynamics in any downstream market, to be considered before assessing the need to impose any other potential remedies, and not just as an ancillary remedy to other wholesale products or services or as a remedy limited to undertakings availing of such other wholesale products or services. National regulatory authorities should

National regulatory authorities should value reusable legacy civil engineering assets on the basis of the regulatory accounting value net of the accumulated depreciation at the time of calculation, indexed by an appropriate price index, such as the retail price index, and excluding those assets which are fully depreciated, over a period of not less than 40 years, but still in use.

value reusable legacy civil engineering assets on the basis of the regulatory accounting value net of the accumulated depreciation at the time of calculation, indexed by an appropriate price index, such as the retail price index, and excluding those assets which are fully depreciated, over a period of not less than 40 years, but still in use.

Or. en

Justification

Access to civil engineering assets can be valuable with respect to deployment of all types of networks, and the corresponding Article 70 is not limited to very high capacity networks.

Amendment 27

Proposal for a directive Recital 183

Text proposed by the Commission

Amendment

(183) This Directive sets maximum wholesale voice call termination rates for fixed and mobile networks below which the initial delegated act will establish the exact rate to be applied by national regulatory authorities. The initial rate will be further updated. Based on the bottom-up pure LRIC models applied by national regulators to date and applying the above criteria the voice termination rates currently vary from 0.4045 €cent per minute to 1.226 €cent per minute in mobile networks and between 0.0430 €cent per minute and 0.1400 €cent per minute in fixed networks in the most local layer of interconnection (calculated as a weighted average between peak and off-peak rates). The variation in rates is due to different local conditions and relative price structures currently existing as well as to the different timing of the model

deleted

calculations across Member States. In addition, in fixed networks the level of cost efficient termination rates depends also on the network layer where the termination service is provided.

Or. en

Amendment 28

Proposal for a directive Recital 190

Text proposed by the Commission

(190) Network owners that do not have retail market activities and whose business model is therefore limited to the provision of wholesale services to others, can be beneficial to the creation of a thriving wholesale market, with positive effects on retail competition downstream. Furthermore, their business model can be attractive to potential financial investors in less volatile infrastructure assets and with longer term perspectives on deployment of very high capacity networks. Nevertheless, the presence of a wholesale-only operator does not necessarily lead to effectively competitive retail markets, and wholesale-only operators can be designated with significant market power in particular product and geographic markets. The competition risks arising from the behaviour of operators following wholesale-only business models might be lower than for vertically integrated operators, provided the wholesale-only model is genuine and no incentives to discriminate between downstream providers exist. The regulatory response should therefore be commensurately less intrusive. On the other hand, national regulatory authorities must be able to intervene if competition problems have arisen to the detriment of end-users.

Amendment

(190) Network owners that do not have retail market activities, ***and undertakings who do have retail market activities but where the wholesale activities are separate from the retail activities and effectively independent with respect to their legal form, operations and management***, and whose business model is therefore limited to the provision of wholesale services to others, can be beneficial to the creation of a thriving wholesale market, with positive effects on retail competition downstream. Furthermore, their business model can be attractive to potential financial investors in less volatile infrastructure assets and with longer term perspectives on deployment of very high capacity networks. Nevertheless, the presence of a wholesale-only operator does not necessarily lead to effectively competitive retail markets, and wholesale-only operators can be designated with significant market power in particular product and geographic markets. The competition risks arising from the behaviour of operators following wholesale-only business models might be lower than for vertically integrated operators, provided the wholesale-only model is genuine and no incentives to discriminate between downstream providers exist. The regulatory response should therefore be commensurately less

intrusive. On the other hand, national regulatory authorities must be able to intervene if competition problems have arisen to the detriment of end-users.

Or. en

Justification

To clarify that Article 77 can apply also with respect to cases of functionally separated undertakings, where the wholesale operator is effectively independent from the retail operations in all relevant respects.

Amendment 29

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, and certain aspects of terminal equipment. It lays down tasks of national regulatory and for other competent authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Union.

Amendment

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, and certain aspects of terminal equipment. It lays down tasks of national regulatory and, ***where applicable***, for other competent authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Union.

Or. en

Justification

To avoid uncertainty regarding the obligations for other competent authorities.

Amendment 30

Proposal for a directive Article 2 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

(2) **'very high capacity network'** means an electronic communications network which either consists wholly of optical fibre elements at least up to the distribution point at the serving location or which is capable of delivering under usual peak-time conditions similar network performance in terms of available down- and uplink bandwidth, resilience, error-related parameters, and latency and its variation. Network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point.

deleted

Or. en

Justification

The definition of very high capacity networks is moved to the new Title III of Part II and amended there.

Amendment 31

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall ensure that in carrying out the regulatory tasks specified in this Directive, the national regulatory and other competent authorities take all reasonable measures which are necessary and proportionate for achieving the objectives set out in paragraph 2. Member States and BEREC shall also contribute to the achievement of these objectives.

Member States shall ensure that in carrying out the regulatory tasks specified in this Directive, the national regulatory and other competent authorities take all reasonable measures which are necessary and proportionate for achieving the objectives set out in paragraph 2. Member States, **the Commission** and BEREC shall also contribute to the achievement of these objectives.

Or. en

Amendment 32

Proposal for a directive

Article 3 – paragraph 2 – introductory part

Text proposed by the Commission

2. The national regulatory and other competent authorities as well as BEREC shall:

Amendment

2. The national regulatory and other competent authorities as well as BEREC, ***the Commission and the Member States*** shall:

Or. en

Amendment 33

Proposal for a directive

Article 3 – paragraph 2 – point a

Text proposed by the Commission

(a) promote access to, and take-up of, very high capacity ***data connectivity, both fixed and mobile***, by all Union citizens and businesses;

Amendment

(a) promote access to, and take-up of, very high capacity ***networks***, by all Union citizens and businesses;

Or. en

Justification

This addresses what appears to have been an inadvertent error in the proposal. Very high capacity networks is a defined term which includes both fixed and mobile networks and those networks offer correspondingly high capacity connectivity (in a broad sense). To not use the defined term in the new general objective would appear liable to cause confusion.

Amendment 34

Proposal for a directive

Article 3 – paragraph 2 – point d

Text proposed by the Commission

(d) promote the interests of the citizens of the Union, ***including in the long term***,

Amendment

(d) promote the interests of the citizens of the Union by ensuring widespread

by ensuring widespread availability and take-up of very high capacity **connectivity, both fixed and mobile**, and of **interpersonal** communications services, by enabling maximum benefits in terms of choice, price and quality on the basis of effective competition, by maintaining security of networks and services, by ensuring a high and common level of protection for end-users through the necessary sector-specific rules and by addressing the needs, such as for affordable prices, of specific social groups, in particular disabled users, elderly users and users with special social needs.

availability and take-up of very high capacity **networks** and of **electronic** communications services, by enabling maximum benefits in terms of choice, price and quality on the basis of effective competition, by maintaining security of networks and services, by ensuring a high and common level of protection for end-users through the necessary sector-specific rules and by addressing the needs, such as for affordable prices, of specific social groups, in particular disabled users, elderly users and users with special social needs.

Or. en

Justification

Promotion of the interests of citizens automatically includes the long term without that needing to be said. Promotion of investment and competition are already addressed in e.g. 3(2)(b)-(c) and should otherwise be addressed directly in the relevant provisions, not indirectly through an emphasis of a particular time horizon. Regardless of the outcome of the discussion on ECS and possible subcategories thereof, it is clear that the interest of citizens extend to electronic communications services generally.

Amendment 35

Proposal for a directive

Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. The Commission may submit legislative proposals to the European Parliament and the Council for establishing programmes for enhanced cooperation between Member States. Such programmes shall include detailed policy orientations for achieving the objectives of paragraph 2, establish methods and objective, concrete and quantifiable criteria for benchmarking the effectiveness of Member State measures towards achieving those objectives and identify best practices. They shall also provide for a yearly qualitative and

quantitative assessment of the state of progress of each Member State. The programmes shall be without prejudice to the independence of national regulatory authorities and other competent authorities.

Or. en

Justification

This AM follows the model of the 2009 framework review providing the basis for the Radio Spectrum Policy Programme. The Commission proposal would be for a decision by the European Parliament and Council establishing a co-operative method towards the general objectives of the Directive, providing for the necessary level of detail to enable benchmarking of progress. The achievement in particular of the new objective relating to very high capacity networks ultimately depends on demand and supply, which are factors beyond the powers of the NRAs and other relevant authorities. It should be made clear that the programme for cooperation envisaged by this AM in no way prejudices their independence. Inextricably linked to other admissible AMs.

Amendment 36

Proposal for a directive Article 4 – paragraph 3

Text proposed by the Commission

3. Member States shall cooperate through the Radio Spectrum Policy Group, established by Commission Decision 2002/622/EC, with each other and with the Commission, and ***upon their request with*** the European Parliament and the Council, in support of the strategic planning and coordination of radio spectrum policy approaches in the Union.

Amendment

3. Member States shall cooperate through the Radio Spectrum Policy Group, established by Commission Decision 2002/622/EC, with each other and with the Commission, and ***the Radio Spectrum Policy Group shall assist and advise*** the European Parliament and the Council ***on request***, in support of the strategic planning and coordination of radio spectrum policy approaches in the Union.

Or. en

Amendment 37

Proposal for a directive Article 5 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

The national regulatory authority shall be responsible at least for the following tasks:

Under the scope of this Directive the national regulatory authority shall be responsible at least for the following tasks:

Or. en

Amendment 38

Proposal for a directive

Article 5 – paragraph 1 – subparagraph 2 – indent 3

Text proposed by the Commission

Amendment

- ensuring the resolution of disputes between undertakings ***and between undertakings and consumers***;

- ensuring the resolution of disputes between undertakings;

Or. en

Justification

It might be too intrusive to maintain this provision, particularly on Member State's competences regarding the subsidiarity principle. It may also add inefficiencies and be out of scope of the workload entrusted to NRAs entrusted with market regulation. If adopted, the corresponding reference in Article 25 would be deleted.

Amendment 39

Proposal for a directive

Article 5 – paragraph 1 – subparagraph 2 – indent 8

Text proposed by the Commission

Amendment

- dealing with issues related to open internet access;

- dealing with issues related to open internet access ***in accordance with Regulation (EU) 2015/2120***;

Or. en

Justification

The generally formulated reference to open internet access should refer more explicitly to the

European legislation in this regard (Regulation (EU) 2015/2120) to clearly frame the types of tasks that are meant by these provisions. This is important to provide legal certainty and avoid differing interpretations of the law.

Amendment 40

Proposal for a directive

Part 1 – title 2 – chapter 2 – title

Text proposed by the Commission

Amendment

General authorisation

General authorisation *and rights of use*

Or. en

Justification

The provisions of this chapter refer to both general authorisation and rights of use - internal logic of the text.

Amendment 41

Proposal for a directive

Article 12 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure the freedom to provide electronic communications networks and services, subject to the conditions set out in this Directive. To this end, Member States shall not prevent an undertaking from providing electronic communications networks or services, except where this is necessary for the reasons set out in Article 52 (1) of the Treaty. Any such limitation to the freedom to provide electronic communications networks and services shall be duly reasoned and shall be notified to the Commission.

1. Member States shall ensure the freedom to provide electronic communications networks and services, subject to the conditions set out in this Directive. To this end, Member States shall not prevent an undertaking from providing electronic communications networks or services, except where this is necessary for the reasons set out in Article 52 (1) of the Treaty. Any such limitation to the freedom to provide electronic communications networks and services shall be duly reasoned and shall be notified to the Commission. ***Member States shall provide the Commission and the other Member States with a reasoned notification within 12 months following the [transposition date] if they deem that a notification requirement is justified. The Commission shall examine the notification and, where***

appropriate, adopt a decision within a period of three months from the date of notification requesting the Member State in question to abolish the notification requirement.

Or. en

Justification

Reinstating an AM aimed at regulatory simplification adopted by the Parliament in its first reading of the TSM Regulation. Subject to final placing.

Amendment 42

**Proposal for a directive
Article 12 – paragraph 2**

Text proposed by the Commission

2. The provision of electronic communications networks or the provision of electronic communications services ***other than number-independent interpersonal communications services*** may, without prejudice to the specific obligations referred to in Article 13(2) or rights of use referred to in Articles 46 and 88, only be subject to a general authorisation.

Amendment

2. The provision of electronic communications networks or the provision of electronic communications services may, without prejudice to the specific obligations referred to in Article 13(2) or rights of use referred to in Articles 46 and 88, only be subject to a general authorisation.

Or. en

Justification

All ECS should benefit from the general authorisation.

Amendment 43

**Proposal for a directive
Article 12 – paragraph 3 – subparagraph 1**

Text proposed by the Commission

3. Where a Member State deems that

Amendment

3. Where a Member State deems that

a notification requirement is justified, that Member State may only require undertakings to submit a notification to BEREC but it may not require them to obtain an explicit decision or any other administrative act by the national regulatory authority or by any other authority before exercising the rights stemming from the authorisation. Upon notification to BEREC, when required, an undertaking may begin activity, where necessary subject to the provisions on rights of use pursuant to this Directive. BEREC shall forward by electronic means and without delay each notification to the national regulatory authority in all Member States concerned by the provision of electronic communications networks or the provision of electronic communications services.

a notification requirement is justified, that Member State may only require undertakings to submit a notification to BEREC but it may not require them to obtain an explicit decision or any other administrative act by the national regulatory authority or by any other authority before exercising the rights stemming from the authorisation. ***Member States requiring notification shall allow but may not require a provider of electronic communications services offered in fewer than [three] Member States and with an aggregate Union turnover of less than EUR [100] million to submit a notification.*** Upon notification to BEREC, when required, an undertaking may begin activity, where necessary subject to the provisions on rights of use pursuant to this Directive. ***If a notification does not identify one or several Member States concerned, it shall be deemed to cover all Member States.*** BEREC shall forward by electronic means and without delay each notification to the national regulatory authority in all Member States concerned by the provision of electronic communications networks or the provision of electronic communications services.

Or. en

Justification

This allows providers of ECS to obtain the benefit of the general authorisation if they so desire in Member States that require notification, while excluding an obligation on those providers to file a notification unless they have a community dimension in the form of meeting a test relating to presence in several member States and minimum turnover (from all sources), as inspired by Union competition law (Regulation 139/2004). This is in line with the approach to newly emerging services, as set out in recital 148 and the Recommendation on relevant product and service markets. Also slight simplification allowing in particular providers of ECS to receive the benefit of the general authorisation across the entire Union without having to list all Member States (some of which also do not require notification). Inextricably linked to other admissible AMs.

Amendment 44

Proposal for a directive Article 16 – paragraph 116 – point b

Text proposed by the Commission

(b) be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges. Member States may choose not to apply administrative charges to undertakings whose turnover is *is* below a certain threshold or whose activities do not reach a minimum market share or have a very limited territorial scope.

Amendment

(b) be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges. Member States may choose not to apply administrative charges to undertakings whose turnover is below a certain threshold or whose activities do not reach a minimum market share or have a very limited territorial scope. ***Member States may not apply any administrative charges on providers of electronic communications services present in fewer than [three] Member States and with an aggregate Union turnover of less than EUR [100] million over and above a one-off charge not exceeding EUR [10], to cover any administrative costs incurred in the mere registration of any voluntary notification under Article 12.***

Or. en

Justification

Providers of ECS wishing to avail themselves of the benefits of the general authorisation, with respect to Member States requiring notification, even though they have not achieved a community dimension should not be dissuaded by burdensome and unpredictable recurring administrative charges.

Amendment 45

Proposal for a directive Article 18 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use for radio spectrum or for

Amendment

1. Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use for radio spectrum or for

numbers or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio spectrum and for numbers.

numbers or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio spectrum and for numbers. ***Amendments regarding individual rights of use for radio spectrum will only be valid if taken with the prior agreement of the right holder.***

Or. en

Justification

From the perspective of foreseeability, an individual right of use, once awarded, should not be subject to amendment not provided for in the original conditions for its grant except with the consent of the rightholder. Inextricably linked to other admissible AMs.

Amendment 46

Proposal for a directive Article 19 – paragraph 2

Text proposed by the Commission

2. In line with the need to ensure the effective and efficient use of radio spectrum or the implementation of harmonised conditions adopted under Decision No 676/2002/EC, Member States may allow withdrawal of rights, including those with a **25** year minimum duration, based on procedures laid down in advance, in compliance with the principles of proportionality and non-discrimination.

Amendment

2. In line with the need to ensure the effective and efficient use of radio spectrum or the implementation of harmonised conditions adopted under Decision No 676/2002/EC, Member States may allow ***the restriction or*** withdrawal of rights ***granted after the date set out in Article 115***, including those with a **30** year minimum duration, based on procedures laid down in advance, ***and with clearly defined usage conditions and thresholds at the time of award or renewal*** in compliance with the principles of proportionality and non-discrimination.

Or. en

Justification

This is a horizontal amendment with respect to the 30 year minimum duration introduced in order to promote legal certainty.

Amendment 47

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point h

Text proposed by the Commission

(h) evaluating future network or service developments that could have an impact on wholesale services made available to competitors, on ***connectivity available to end-users*** or on the designation of digital exclusion areas.

Amendment

(h) evaluating future network or service developments that could have an impact on wholesale services made available to competitors, on ***territorial coverage*** or on the designation of digital exclusion areas.

Or. en

Justification

This provision is part of the information national authorities may request from providers. The text therefore needs to be clear. "Connectivity" here clearly means coverage.

Amendment 48

Proposal for a directive

Article 22 – paragraph 1 – subparagraph 2 – point b

Text proposed by the Commission

b) a three-year forecast of the reach of broadband networks within their territory, relying on the information gathered in accordance with point (a), where this is available and relevant.

This forecast shall reflect the economic prospects of the electronic communications networks sector and investment intentions of operators at the time when the data is gathered, in order to allow the identification of available connectivity in different areas. This forecast shall include information on

Amendment

deleted

planned deployments by any undertaking or public authority, in particular to include very high capacity networks and significant upgrades or extensions of legacy broadband networks to at least the performance of next-generation access networks. For this purpose, national regulatory authorities shall request undertakings to provide relevant information regarding planned deployments of such networks.

Or. en

Justification

Art 22 is simplified to only concern current conditions. The forward looking part is amended and moved to the new Title III of Part II on very high capacity networks.

Amendment 49

**Proposal for a directive
Article 22 – paragraph 2**

Text proposed by the Commission

Amendment

2. National regulatory authorities may designate a "digital exclusion area" corresponding to an area with clear territorial boundaries where, on the basis of the information gathered pursuant to paragraph 1, it is determined that for the duration of the relevant forecast period, no undertaking or public authority has deployed or is planning to deploy a very high capacity network or has significantly upgraded or extended its network to a performance of at least 100 Mbps download speeds, or is planning to do so. National regulatory authorities shall publish the designated digital exclusion areas.

deleted

Or. en

Justification

This part is moved to the new Title III of Part II on very high capacity networks.

Amendment 50

**Proposal for a directive
Article 22 – paragraph 3**

Text proposed by the Commission

Amendment

3. *Within a designated digital exclusion area, national regulatory authorities may issue a call open to any undertaking to declare their intention to deploy very high capacity networks over the duration of the relevant forecast period. The national regulatory authority shall specify the information to be included in such submissions, in order to ensure at least a similar level of detail as that taken into consideration in the forecast envisaged in paragraph 1(b). It shall also inform any undertaking expressing its interest whether the designated digital exclusion area is covered or likely to be covered by an NGA network offering download speeds below 100 Mbps on the basis of the information gathered pursuant to paragraph 1(b).* **deleted**

Or. en

Justification

This part is moved to the new Title III of Part II on very high capacity networks.

Amendment 51

**Proposal for a directive
Article 22 – paragraph 4**

Text proposed by the Commission

Amendment

4. *When national regulatory authorities take measures pursuant to paragraph 3, they shall do so according to* **deleted**

an efficient, objective, transparent and non-discriminatory procedure, whereby no undertaking is a priori excluded. Failure to provide information pursuant to paragraph 1(b) or to respond to the call for interest pursuant to paragraph 3 may be considered as misleading information pursuant to Articles 20 or 21.

Or. en

Amendment 52

Proposal for a directive Article 22 – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that local, regional and national authorities with responsibility for the allocation of public funds for the deployment of electronic communications networks, for the design of national broadband plans, for defining coverage obligations attached to rights of use for radio spectrum and for verifying availability of services falling within the universal service obligation in their territory take into account the results of the **surveys and of the designated digital exclusion areas** conducted in accordance with **paragraphs 1, 2 and 3**, and that national regulatory authorities supply such results subject to the receiving authority ensuring the same level of confidentiality and protection of business secrets as the originating authority. These results shall also be made available to BEREC and the Commission upon their request and under the same conditions.

Amendment

5. Member States shall ensure that local, regional and national authorities with responsibility for the allocation of public funds for the deployment of electronic communications networks, for the design of national broadband plans, for defining coverage obligations attached to rights of use for radio spectrum and for verifying availability of services falling within the universal service obligation in their territory take into account the results of the **survey** conducted in accordance with **paragraph 1** and that national regulatory authorities supply such results subject to the receiving authority ensuring the same level of confidentiality and protection of business secrets as the originating authority **and inform the parties which provided the information**. These results shall also be made available to BEREC and the Commission upon their request and under the same conditions.

Or. en

Amendment 53

Proposal for a directive Article 22 – paragraph 6

Text proposed by the Commission

6. National regulatory authorities may make available information tools to end-users, in order to assist them to determine the availability of connectivity in different areas, with a level of detail which is useful to support their choice ***in terms of connectivity services***, in line with national regulatory authority's obligations regarding the protection of confidential information and business secrets.

Amendment

6. National regulatory authorities may make available information tools to end-users, in order to assist them to determine the availability of connectivity in different areas, with a level of detail which is useful to support their choice, in line with national regulatory authority's obligations regarding the protection of confidential information and business secrets.

Or. en

Justification

While "connectivity" as opposed to "coverage" might work in the context of end-user information tools and availability, given that lack of coverage is immediately noticeable, such end-user tools should be able to cover what's useful in terms of choice in the circumstances and not limited to undefined "connectivity services".

Amendment 54

Proposal for a directive Article 28 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall cooperate with each other, through the Radio Spectrum Policy Group, in the cross-border coordination of the use of radio spectrum in order to:

Amendment

2. Member States shall cooperate with each other, through the Radio Spectrum Policy Group ***established pursuant to paragraph 4a***, in the cross-border coordination of the use of radio spectrum in order to:

Or. en

Justification

In order to enhance the role of the RSPG it should be created in the EECC itself and the secretariat (currently provided by the Commission) should be discussed, as reflected in this amendment and in the amendment for a new paragraph 4a (the Rapporteur is aware that full

implementation of this idea might require further technical work at a later stage). Further, the opportunity should be taken of expanding this structured cooperation to spectrum issues more generally.

Amendment 55

Proposal for a directive

Article 28 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Member States shall also cooperate with each other, through the Radio Spectrum Policy Group, with respect to aligning their approaches to the assignment and authorisation of radio spectrum.

Or. en

Justification

Inextricably linked to other admissible AMs.

Amendment 56

Proposal for a directive

Article 28 – paragraph 3

Text proposed by the Commission

Amendment

3. Any Member State concerned as well as the Commission may request the Radio Spectrum Policy Group to use its good offices and, where appropriate, to propose a coordinated solution in an opinion, in order to assist Member States in complying with paragraphs 1 and 2.

3. Any Member State concerned as well as the Commission may request the Radio Spectrum Policy Group to use its good offices and, where appropriate, to propose a coordinated solution in an opinion, in order to assist Member States in complying with paragraphs 1 and 2. **Member States shall refer any unresolved dispute to the Radio Spectrum Policy Group, in priority to any available dispute settlement process provided under international law.**

Or. en

Justification

Coordination between Member States to resolve interference when authorising harmonised spectrum uses should be strengthened by requiring more prominently recourse to RSPG in the case of lengthy and problematic cases. The proposed amendment aims at giving precedence to an EU process of dispute settlement.

Amendment 57

Proposal for a directive Article 28 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. An advisory group on radio spectrum policy, called the Radio Spectrum Policy Group, consisting of one high level governmental expert from each Member State as well as of a high-level representative from the Commission is hereby established.

The group shall assist and advise the Member States and the Commission on cross-border coordination of the use of radio spectrum, on aligning their approaches to the assignment and authorisation of radio spectrum and on other radio spectrum policy and coordination issues.

The secretariat shall be provided by [].

Or. en

Justification

Inextricably linked to other admissible AMs.

Amendment 58

Proposal for a directive Article 29 – paragraph 1

Text proposed by the Commission

Amendment

Member States shall lay down rules on penalties, fines and periodic penalties,

Member States shall lay down rules on penalties, fines and periodic penalties,

where necessary, applicable to infringements of national provisions adopted pursuant to this Directive *or of any relevant legally binding decision of the national regulatory or other competent authority* and shall take all measures necessary to ensure that they are implemented. Within the limits of national constitutional law, national regulatory and other competent authorities shall have the power to impose such penalties. The penalties provided for must be appropriate, effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by [date for transposition] and shall notify it without delay of any subsequent amendment affecting them.

where necessary, applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. Within the limits of national constitutional law, national regulatory and other competent authorities shall have the power to impose such penalties. The penalties provided for must be appropriate, effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by [date for transposition] and shall notify it without delay of any subsequent amendment affecting them.

Or. en

Amendment 59

Proposal for a directive

Article 32 – paragraph 3 – subparagraph 2

Text proposed by the Commission

it shall make the draft measure accessible to the Commission, BEREC, and the national regulatory authorities in other Member States, at the same time, together with the reasoning on which the measure is based, in accordance with Article 20(3), and inform the Commission, BEREC and other national regulatory authorities thereof. National regulatory authorities, BEREC and the Commission may make comments to the national regulatory authority concerned only within one month. The one-month period may not be extended.

Amendment

it shall make the draft measure accessible to the Commission, BEREC, and the national regulatory authorities in other Member States, at the same time, together with the reasoning *and detailed analysis* on which the measure is based, in accordance with Article 20(3), and inform the Commission, BEREC and other national regulatory authorities thereof. National regulatory authorities, BEREC and the Commission may make comments to the national regulatory authority concerned only within one month. The one-month period may not be extended.

Or. en

Justification

It follows from the internal logic of the text that the reasoning on which the measure is based also should include the underlying detailed analysis.

Amendment 60

Proposal for a directive

Article 35 – paragraph 1 – subparagraph 1 – point f

Text proposed by the Commission

(f) the conditions related to the assignment, transfer, including trade and lease of rights of use for radio spectrum in relation to Article 51, *sharing of spectrum or wireless infrastructure in relation to Article 59 paragraph 3* or the accumulation of rights of use in relation to Article 52 paragraph 2 (c) and (e); and

Amendment

(f) the conditions related to the assignment, transfer, including trade and lease of rights of use for radio spectrum in relation to Article 51, or the accumulation of rights of use in relation to Article 52 paragraph 2 (c) and (e); and

Or. en

Justification

This AM is introduced for consistency with the deletion of Article 59(3).

Amendment 61

Proposal for a directive

Article 35 – paragraph 2

Text proposed by the Commission

2. Where a national regulatory authority intends to take a measure which falls within the scope of paragraph 1 (a) to (g), it shall make the draft measure accessible, together with the reasoning on which the measure is based, to BEREC, the Commission and national regulatory authorities in other Member States, at the same time.

Amendment

2. Where a national regulatory authority intends to take a measure which falls within the scope of paragraph 1 (a) to (g), it shall make the draft measure **publicly available and** accessible, together with the reasoning on which the measure is based, to BEREC, the Commission and national regulatory authorities in other Member States, at the same time.

Or. en

Amendment 62

Proposal for a directive

Article 35 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Within ***one month, or a longer period, if the national regulatory authority agrees to extend the deadline***, BEREC shall issue a reasoned opinion on the draft measure, which shall analyse whether that measure would be the most appropriate in order to:

Amendment

Within ***three months***, BEREC shall issue a reasoned opinion on the draft measure, which shall analyse whether that measure would be the most appropriate in order to:

Or. en

Justification

The peer review process should be efficient, and not extended for unlimited time.

Amendment 63

Proposal for a directive

Article 35 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) ***promote the development of the internal market as well as competition and maximise the benefits for the consumer, and*** overall achieve the objectives ***and principles*** set in Articles 3 and 45(2),

Amendment

(a) overall achieve the objectives set in Articles 3 and 45(2),

Or. en

Justification

The objectives mentioned here are already established in Articles 3 and 45(2) but in slightly different wordings, and "principles" are different from "objectives". The deletion minimises possible confusion.

Amendment 64

Proposal for a directive

Article 35 – paragraph 4 – point f

Text proposed by the Commission

(f) any relevant opinion of the Radio Spectrum Policy Group.

Amendment

(f) any relevant opinion of the Radio Spectrum Policy Group ***in particular regarding the effective and efficient use of radio spectrum.***

Or. en

Amendment 65

**Proposal for a directive
Article 35 – paragraph 6**

Text proposed by the Commission

6. When preparing their draft measure pursuant to this Article, national regulatory authorities may seek support from BEREC.

Amendment

6. When preparing their draft measure pursuant to this Article, national regulatory authorities may seek support from BEREC ***and the Radio Spectrum Policy Group.***

Or. en

Amendment 66

**Proposal for a directive
Article 35 – paragraph 7**

Text proposed by the Commission

7. BEREC, the Commission and the national regulatory authority concerned shall cooperate closely to identify the most appropriate and effective solution in the light of the regulatory objectives and principles laid down in this Directive whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.

Amendment

7. BEREC, the ***Radio Spectrum Policy Group, the*** Commission and the national regulatory authority concerned shall cooperate closely to identify the most appropriate and effective solution in the light of the regulatory objectives and principles laid down in this Directive whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.

Or. en

Amendment 67

Proposal for a directive

Article 37 – paragraph 1 – introductory part

Text proposed by the Commission

1. Two or several Member States may cooperate with each other and with the Commission and BEREC to meet their obligations under Articles 13, 46 and 54, by jointly establishing the common aspects of an authorisation process and also jointly conducting the selection process to grant individual rights of use for radio spectrum in line, where applicable with any common timetable established in accordance with Article 53. The joint authorisation process shall meet the following criteria:

Amendment

1. Two or several Member States may cooperate with each other and with the Commission, ***the Radio Spectrum Policy Group*** and BEREC to meet their obligations under Articles 13, 46 and 54, by jointly establishing the common aspects of an authorisation process and also jointly conducting the selection process to grant individual rights of use for radio spectrum in line, where applicable with any common timetable established in accordance with Article 53. The joint authorisation process shall meet the following criteria:

Or. en

Amendment 68

Proposal for a directive

Article 42 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States may allow the competent authority to impose fees for the rights of use for radio spectrum or rights to install facilities on, over or under public or private property that are used for the provision of electronic communications services or networks and associated facilities which ensure the optimal use of these resources. Member States shall ensure that such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose ***and shall take into account the objectives in Articles 3, 4 and 45(2)***, as well as:

Amendment

1. Member States may allow the competent authority to impose fees for the rights of use for radio spectrum or rights to install facilities on, over or under public or private property that are used for the provision of electronic communications services or networks and associated facilities which ensure the optimal use of these resources. Member States shall ensure that such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose as well as:

Justification

"Optimal use" is the purpose of the fees, as stated a few lines above in the paragraph and in the recital, not also e.g. maintaining security (Art 3(2)(d)), strategic planning and coordination between MS (Art 4) or preventing interference (Art 45(2)(d)). Further specific purposes are set out in points (a)-(c) in any event. Inextricably linked to other admissible AMs.

Amendment 69**Proposal for a directive****Article 42 – paragraph 1 – point a***Text proposed by the Commission*

(a) being service and technology neutral, subject only to limitations in line with Article 45(4) and (5), ***while promoting the effective and efficient use of spectrum and maximising social and economic utility of spectrum;***

Amendment

(a) being service and technology neutral, subject only to limitations in line with Article 45(4) and (5);

Or. en

Amendment 70**Proposal for a directive****Article 42 – paragraph 2***Text proposed by the Commission*

2. Member States shall ensure that reserve prices established as minimum fees for rights of use for radio spectrum reflect the additional costs entailed by conditions attached to these rights in pursuit of the objectives under Articles 3, 4 and 45(2), such as coverage obligations that would fall outside normal commercial standards, ***in accordance with paragraph 1.***

Amendment

2. Member States shall ensure that reserve prices established as minimum fees for rights of use for radio spectrum ***take into account the value of the rights in their possible alternative use and*** reflect the additional costs entailed by conditions attached to these rights in pursuit of the objectives under Articles 3, 4 and 45(2), such as coverage obligations that would fall outside normal commercial standards.

Or. en

Justification

Fees imposed on undertakings for the rights of use for radio spectrum can influence decisions about whether to seek such rights and how to make the best use of radio spectrum resources. With a view of ensuring optimal use, when setting reserve prices representing the minimum valuation, Member States should make sure that these are based on a thorough assessment of the market conditions at the moment of the assignment, taking into account the value of the rights in their second-best use.

Amendment 71

Proposal for a directive

Article 46 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall facilitate the use of radio spectrum, including shared use, under general authorisations and limit the granting of individual rights of use for radio spectrum to situations where ***such rights are*** necessary ***to maximise efficient use in the light of demand and, taking into account the criteria set out in the second subparagraph. In all other cases, they shall set out the conditions for the use of radio spectrum in a general authorisation.***

Amendment

Member States shall facilitate the use of radio spectrum, including shared use, under general authorisations and limit the granting of individual rights of use for radio spectrum to situations where necessary ***in order to:***

Or. en

Justification

The AMs to Art 46 form a block intended primarily to simplify the Article and bring it closer to its current wording.

Amendment 72

Proposal for a directive

Article 46 – paragraph 1 – subparagraph 2

Text proposed by the Commission

To this end, Member States shall decide on the most appropriate regime for authorising the use of radio spectrum,

Amendment

deleted

taking account :

(a) the specific characteristics of the radio spectrum concerned;

(b) the need to protect against harmful interference;

(c) the requirements for a reliable sharing arrangement, where appropriate;

(d) the appropriate level of receiver resilience to ensure technical quality of communications or service;

(e) objectives of general interest as defined by Member States in conformity with Union law.

Or. en

Amendment 73

Proposal for a directive

Article 46 – paragraph 1 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) *the need to protect against* harmful interference;

(b) *avoid* harmful interference;

Or. en

Justification

Inextricably linked to other admissible AMs.

Amendment 74

Proposal for a directive

Article 46 – paragraph 1 – subparagraph 2 – point d

Text proposed by the Commission

Amendment

(d) *the appropriate level of receiver resilience to* ensure technical quality of communications or service;

(d) ensure technical quality of communications or service;

Justification

Inextricably linked to other admissible AMs.

Amendment 75

Proposal for a directive

Article 46 – paragraph 1 – subparagraph 2 – point e

Text proposed by the Commission

(e) objectives of general interest as defined by Member States in conformity with Union law.

Amendment

(e) ***fulfil other*** objectives of general interest as defined by Member States in conformity with Union law.

Or. en

Justification

Inextricably linked to other admissible AMs.

Amendment 76

Proposal for a directive

Article 46 – paragraph 1 – subparagraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(e a) ***maximise efficient use of spectrum.***

Or. en

Justification

Inextricably linked to other admissible AMs.

Amendment 77

Proposal for a directive

Article 46 – paragraph 1 – subparagraph 3 – introductory part

Text proposed by the Commission

Amendment

When applying a general authorisation or individual rights taking in account measures adopted under Decision No 676/2002/EC where the radio spectrum band concerned has been harmonised, Member States shall seek to minimise problems of harmful interference, including in cases of shared use of radio spectrum on the basis of a combination of general authorisation and individual rights of use. In so doing, they shall have regard to the need:

Where ***appropriate***, Member States shall ***consider the possibility to authorise the*** use of radio spectrum ***based on*** a combination of general authorisation and individual rights of use.

Or. en

Amendment 78

Proposal for a directive

Article 46 – paragraph 1 – subparagraph 3 – indent 1

Text proposed by the Commission

Amendment

- ***to maintain incentives for incorporation of resilient receiver technologies in devices;***

deleted

Or. en

Amendment 79

Proposal for a directive

Article 46 – paragraph 1 – subparagraph 3 – indent 2

Text proposed by the Commission

Amendment

- ***to prevent impediments caused by alternative users;***

deleted

Or. en

Amendment 80

Proposal for a directive

Article 46 – paragraph 1 – subparagraph 3 – indent 3

Text proposed by the Commission

Amendment

- *to avoid to the best extent possible the application of the non-interference, non-protection principle to general authorisation regimes; and* *deleted*

Or. en

Amendment 81

Proposal for a directive

Article 46 – paragraph 1 – subparagraph 3 – indent 4

Text proposed by the Commission

Amendment

- *where that principle still applies, to protect against out-of-band interference.* *deleted*

Or. en

Amendment 82

Proposal for a directive

Article 46 – paragraph 1 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

Member States shall minimise restrictions to the use of radio spectrum by taking full account of technological solutions for managing harmful interferences so as to impose the least onerous authorisation regime possible.

Or. en

Justification

Inextricably linked to other admissible AMs.

Amendment 83

Proposal for a directive Article 46 – paragraph 2

Text proposed by the Commission

2. ***When taking a decision pursuant to paragraph 1 with a view to facilitating the shared use of radio spectrum, the competent authorities*** shall ensure that the rules and conditions for the shared use of radio spectrum are clearly set out and ***concretely*** specified in the acts of authorisation.

Amendment

2. ***Member States*** shall ensure that the rules and conditions for the shared use of radio spectrum, ***where applied***, are clearly set out and specified in the acts of authorisation.

Or. en

Amendment 84

Proposal for a directive Article 46 – paragraph 3

Text proposed by the Commission

3. The Commission ***may***, taking utmost account of the opinion of the Radio Spectrum Policy Group, adopt implementing measures on the modalities of application of the criteria, rules and conditions referred to in paragraphs 1 and 2 with regard to harmonised radio spectrum. It shall adopt these measures in accordance with the examination procedure referred to in Article 110(4).

Amendment

3. The Commission ***shall***, taking utmost account of the opinion of the Radio Spectrum Policy Group, adopt implementing measures on the modalities of application of the criteria, rules and conditions referred to in paragraphs 1 and 2 with regard to harmonised radio spectrum. It shall adopt these measures in accordance with the examination procedure referred to in Article 110(4). ***These measures shall be adopted by [insert date].***

Or. en

Justification

Horizontal AM applicable to all mandates to the Commission. Any mandate given to the Commission should be necessary. In order to enable scrutiny, mandates should lead to measures by a date certain.

Amendment 85

Proposal for a directive

Article 47 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Competent authorities shall attach conditions to individual rights and general authorisations to use radio spectrum in accordance with Article 13(1) in such a way as to ensure ***the most effective and efficient*** use of radio spectrum by the beneficiaries of the general authorisation or the holders of individual rights or by any third party to which an individual right or part thereof has been traded or leased. They shall clearly define any such conditions including the level of use required and the possibility to trade and lease in relation to this obligation in order to ensure the implementation of those conditions in line with Article 30. Conditions attached to renewals of right of use for radio spectrum may not provide undue advantages to existing holders of those rights.

Amendment

Competent authorities shall attach conditions to individual rights and general authorisations to use radio spectrum in accordance with Article 13(1) in such a way as to ensure ***optimal*** use of radio spectrum by the beneficiaries of the general authorisation or the holders of individual rights or by any third party to which an individual right or part thereof has been traded or leased. They shall clearly define any such conditions including the level of use required and the possibility to trade and lease in relation to this obligation in order to ensure the implementation of those conditions in line with Article 30. ***In the case of individual rights any such conditions must be clearly defined before the award, assignment or renewal.*** Conditions attached to renewals of right of use for radio spectrum may not provide undue advantages to existing holders of those rights.

Or. en

Amendment 86

Proposal for a directive

Article 49 – paragraph 2

Text proposed by the Commission

2. Where Member States grant rights of use for harmonised radio spectrum ***for a limited period of time***, those rights of use for harmonised radio spectrum shall be valid for a duration of at least **25** years, except in the case of temporary rights, temporary extension of rights pursuant to paragraph 3 and rights for secondary use in

Amendment

2. Where Member States grant rights of use for harmonised radio spectrum those rights of use for harmonised radio spectrum shall be valid for a duration of at least **30** years, except in the case of temporary rights, temporary extension of rights pursuant to paragraph 3 and rights for secondary use in harmonised bands.

harmonised bands.

Or. en

Amendment 87

Proposal for a directive Article 50 – paragraph 1

Text proposed by the Commission

1. Competent authorities shall **take a decision on** the renewal of individual rights of use for harmonised radio spectrum, **at least 3 years before the expiry of those rights. They shall consider such renewal, whether** at their own initiative or upon request by the right holder, in the latter case not earlier than 5 years prior to expiry of the rights concerned. **This shall be without prejudice to renewal clauses applicable to existing rights.**

Amendment

1. **Without prejudice to renewal clauses applicable to existing rights,** competent authorities shall **consider** the renewal of **existing** individual rights of use for harmonised radio spectrum at their own initiative or upon request by the right holder, in the latter case not earlier than 5 years prior to expiry of the rights concerned.

Or. en

Justification

Clarity and predictability in the possibility to have spectrum usage rights renewed is essential in supporting and encouraging investments. The AM further clarifies the conditions and the procedure for renewal.

Amendment 88

Proposal for a directive Article 50 – paragraph 2

Text proposed by the Commission

2. **In taking a decision pursuant to paragraph 1, competent authorities shall have regard to the following considerations:**

(a) fulfilment of the objectives of Articles 3, 45(2) and 48(2), as well as public policy objectives under national or Union law;

Amendment

deleted

(b) implementation of a measure adopted pursuant to Article 4 of Decision No 676/2002/EC;

(c) review of the appropriate implementation of the conditions attached to the right concerned;

(d) the need to promote, or avoid any distortion of, competition in line with Article 52;

(e) rendering the use of radio spectrum more efficient in light of technological or market evolution;

(f) the need to avoid severe service disruption.

Or. en

Amendment 89

Proposal for a directive

Article 50 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

When considering possible renewal of individual rights of use for radio spectrum *for which the number of rights of use is limited*, competent authorities shall *conduct an open, transparent and non-discriminatory procedure to examine the criteria in paragraph 2, and shall, in particular,*

When considering possible renewal of individual rights of use for *harmonised* radio spectrum, competent authorities shall:

Or. en

Amendment 90

Proposal for a directive

Article 50 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) *clearly state the reasons for such*

(b) *have regard to the following*

possible renewal.

considerations:

- 1. fulfilment of the objectives of Articles 3, 45(2) and 48(2), as well as public policy objectives under national or Union law;*
- 2. implementation of a measure adopted pursuant to Article 4 of Decision No 676/2002/EC;*
- 3. review of the appropriate implementation of the conditions attached to the right concerned;*
- 4. the need to promote, or avoid any distortion of, competition pursuant to Article 52;*
- 5. rendering the use of radio spectrum more efficient in light of technological or market evolution;*
- 6. the need to avoid severe service disruption;*
- 7. existence of market demand from undertakings other than those holding rights of use for spectrum in the band concerned;*
- 8. the need to limit the number of rights in line with article 46.*

Or. en

Justification

Inextricably linked to other admissible AMs.

Amendment 91

Proposal for a directive
Article 50 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

If as a result of the consultation pursuant to the first subparagraph, there is evidence of market demand from undertakings other than those holding rights of use for spectrum in the band concerned, the competent authority shall

deleted

grant the rights pursuant to Article 54.

Or. en

Amendment 92

Proposal for a directive Article 50 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. At least 3 years before the expiry of the rights involved, the competent authority shall decide whether to renew the existing rights based on the outcome of the public consultation and the review of the considerations under subparagraph 2(b) and justify its decision accordingly.

Where the competent authority decides that the spectrum rights shall not be renewed, and that the number of rights has to be limited, the competent authority shall grant the rights pursuant to Article 54.

Or. en

Justification

Inextricably linked to other admissible AMs.

Amendment 93

Proposal for a directive Article 51 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall ensure that undertakings may transfer or lease to other undertakings ***in accordance with conditions attached to the rights of use for radio spectrum and in accordance with national procedures*** individual rights of

Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights of use for radio spectrum.

use for radio spectrum *in the bands for which this is provided in the implementing measures adopted pursuant to paragraph 4 or by any other Union measure such as the a radio spectrum policy programme adopted pursuant to Article 4(4).*

Or. en

Justification

The AMs to Art 51 aim at further strengthening the possibility to trade spectrum, with a view to enabling its optimal use. They are inextricably linked to other admissible AMs

Amendment 94

**Proposal for a directive
Article 51 – paragraph 1 – subparagraph 2**

Text proposed by the Commission

Amendment

In other bands, Member States may also make provision for undertakings to transfer or lease individual rights of use for radio frequencies to other undertakings in accordance with national procedures.

deleted

Or. en

Amendment 95

**Proposal for a directive
Article 51 – paragraph 1 – subparagraph 3**

Text proposed by the Commission

Amendment

Without prejudice to paragraph 3, conditions attached to individual rights of use for radio spectrum shall continue to apply after the transfer or lease, unless otherwise specified by the competent authority.

deleted

Amendment 96

Proposal for a directive

Article 51 – paragraph 1 – subparagraph 4

Text proposed by the Commission

Member States may also determine that the provisions of this paragraph shall not apply where the undertaking's individual right to use radio frequencies was initially obtained free of charge.

Amendment

deleted

Or. en

Amendment 97

Proposal for a directive

Article 51 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that an undertaking's intention to transfer rights of use for radio spectrum, as well as the effective transfer thereof is notified in accordance with national procedures to the national regulatory authority and to the competent authority responsible for granting individual rights of use if different and is made public. Where the use of radio spectrum has been harmonised through the application of the Decision No 676/2002/EC (Radio Spectrum Decision) or other Union measures, any such transfer shall comply with such harmonised use.

Amendment

2. Member States shall ensure that an undertaking's intention to transfer rights of use for radio spectrum, as well as the effective transfer thereof is notified in accordance with national procedures to the national regulatory authority and to the competent authority responsible for granting individual rights of use if different and is made public ***by entry on the register kept pursuant to paragraph 3***. Where the use of radio spectrum has been harmonised through the application of the Decision No 676/2002/EC (Radio Spectrum Decision) or other Union measures, any such transfer shall comply with such harmonised use.

Or. en

Amendment 98

Proposal for a directive

Article 51 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) submit **trading and leasing** to the least onerous procedure possible;

Amendment

(a) submit **transfers and leases** to the least onerous procedure possible;

Or. en

Amendment 99

Proposal for a directive

Article 51 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

(b) **following notification by the lessor**, not refuse the lease of rights of use for radio spectrum **unless** the lessor **does not undertake** to remain liable for meeting the original conditions attached to the rights of use;

Amendment

(b) not refuse the lease of rights of use for radio spectrum **where** the lessor **undertakes** to remain liable for meeting the original conditions attached to the rights of use;

Or. en

Amendment 100

Proposal for a directive

Article 51 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

(c) **following a request by the parties, approve** the transfer of rights of use for radio spectrum unless the new holder is unable to meet the **original** conditions for the right of use.

Amendment

(c) **not refuse** the transfer of rights of use for radio spectrum unless **there is a clear risk that** the new holder is unable to meet the conditions for the right of use;

Or. en

Amendment 101

Proposal for a directive

Article 51 – paragraph 3 – subparagraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(c a) not refuse a transfer or lease to an existing holder of rights of use for radio spectrum.

Or. en

Amendment 102

Proposal for a directive

Article 51 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Any administrative charge imposed on undertakings in connection with processing an application for the transfer or lease of rights of use for radio spectrum shall, in total, cover only the administrative costs, including any necessary ancillary steps, incurred in processing the application, and comply with Article 16.

Or. en

Amendment 103

Proposal for a directive

Article 51 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

Points (a) to (c) are without prejudice to the Member States' competence to enforce compliance with the conditions attached to the rights of use at any time ***both with regard to the lessor and the lessee, in accordance with their national law.***

Points (a) to (ca) are without prejudice to the Member States' competence to enforce compliance with the conditions attached to the rights of use at any time.

Amendment 104

Proposal for a directive

Article 51 – paragraph 3 – subparagraph 4

Text proposed by the Commission

In view of any transfer or lease of rights of use for radio spectrum, competent authorities shall make all details relating to tradable individual rights publicly available in a standardised electronic format when the rights are created and keep those details as long as the rights exist.

Amendment

In view of any transfer or lease of rights of use for radio spectrum, competent authorities shall make all details relating to tradable individual rights publicly available in a standardised electronic format when the rights are created and keep those details **current** as long as the rights exist.

Amendment 105

Proposal for a directive

Article 52 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

When Member States grant, amend or renew rights of use for radio spectrum, their national regulatory authorities **may take appropriate** measures **such as:**

Amendment

When Member States grant, amend or renew rights of use for radio spectrum, their national regulatory authorities **shall, taking into utmost account the guidelines for market analysis and the assessment of significant market power published by the Commission pursuant to Article 62(2), conduct an objective and forward-looking assessment of the market competitive conditions, and shall only take any of the measures set out in points (a) to (e) where such a measure is necessary to maintain or achieve effective competition and will not have undue negative effects on existing and future investments by operators in particular for network roll-out.**

Justification

In order avoid inconsistent approaches, the guidelines for market analysis and the assessment of significant market power should be duly taken into account also in this context, as well as the need to safeguard investment.

Amendment 106

Proposal for a directive

Article 52 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) limiting the amount of radio spectrum for which rights of use are granted to any undertaking, or attaching conditions to such rights of use, such as the provision of wholesale access, national or regional roaming, in certain bands or in certain groups of bands with similar characteristics;

Amendment

(a) limiting the amount of radio spectrum for which rights of use are granted to any undertaking, or, ***in exceptional circumstances***, attaching conditions to such rights of use, such as the provision of wholesale access, national or regional roaming, in certain bands or in certain groups of bands with similar characteristics;

Or. en

Justification

Conditions of rights of use for spectrum should only involve access obligations etc in exceptional cases in order not to discourage investment.

Amendment 107

Proposal for a directive

Article 52 – paragraph 2 – subparagraph 2

Text proposed by the Commission

National regulatory authorities shall, taking into account market conditions and available benchmarks, base their decision on an objective and forward-looking assessment of the market competitive conditions and of whether such measures are necessary to maintain or achieve effective competition and of the likely effects of such measures on existing and future investments by market operators in

Amendment

deleted

particular for network roll-out.

Or. en

Justification

Amended and integrated into the introductory part of Art 52(2).

Amendment 108

**Proposal for a directive
Article 54 – paragraph 1 – point a**

Text proposed by the Commission

(a) clearly state the reasons for limiting the rights of use, in particular by giving due weight to the need to maximise benefits for users and to facilitate the development of competition, ***and review the limitation at regular intervals or at the reasonable request of affected undertakings;***

Amendment

(a) clearly state the reasons for limiting the rights of use, in particular by giving due weight to the need to maximise benefits for users and to facilitate the development of competition;

Or. en

Amendment 109

**Proposal for a directive
Article 56 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2 a. Member States shall ensure that operators have the right to access any physical infrastructure controlled by public national, regional or local authorities, which is technically suitable to host small-area wireless access points or which is necessary to connect such access points to a backbone network, including street furniture, such as light poles, street signs, traffic lights, billboards, bus, tramway stops, metro stations.

Public authorities shall meet all reasonable requests for access on fair reasonable and non-discriminatory terms and conditions, which shall be made transparent at a central access point. Any financial charge shall only reflect costs incurred by the public authority from the provision of such access.

Or. en

Justification

The AM establishes an obligation and conditions for accessing public building and other public infrastructure for deploying small-cells with a view to complement the Cost Reduction Directive. This obligation will ensure that these public buildings, which are socio-economic enablers, can be equipped with very high capacity connectivity. Inextricably linked to other admissible AMs.

Amendment 110

Proposal for a directive

Article 59 – paragraph 2 – subparagraph 3 – introductory part

Text proposed by the Commission

National regulatory authorities shall not impose obligations in accordance with the second subparagraph **where:**

Amendment

National regulatory authorities shall not impose obligations in accordance with the second subparagraph

Or. en

Justification

Symmetric obligations relate to networks elements as such, independently of their owners. The exception from the possibility to impose symmetric obligations should be neutral as to the character of the network but not to situations where the economics of the network deployment would be compromised by the obligation.

Amendment 111

Proposal for a directive

Article 59 – paragraph 2 – subparagraph 3 – point a

Text proposed by the Commission

Amendment

(a) a viable and similar alternative means of access to end-users is made available to any undertaking, provided that the access is offered on fair and reasonable terms and conditions to a very high capacity network by an undertaking meeting the criteria listed in Article 77 paragraphs (a) and (b); and **deleted**

Or. en

Justification

Symmetric obligations relate to networks elements as such, independently of their owners. The exception from the possibility to impose symmetric obligations should neutral as to the character of the network but not to situations where the economics of the network deployment would be compromised by the obligation.

Amendment 112

Proposal for a directive

Article 59 – paragraph 2 – subparagraph 3 – point b

Text proposed by the Commission

Amendment

(b) in the case of recently deployed network elements, *in particular by smaller local projects*, the granting of that access would compromise the economic or financial viability of their deployment.

in the case of recently deployed network elements **where** the granting of that access would compromise the economic or financial viability of their deployment.

Or. en

Justification

Symmetric obligations relate to networks elements as such, independently of their owners. The exception from the possibility to impose symmetric obligations should neutral as to the character of the network but not to situations where the economics of the network deployment would be compromised by the obligation.

Amendment 113

Proposal for a directive Article 59 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that national regulatory authorities have the power to impose on undertakings providing or authorised to provide electronic communications networks obligations in relation to the sharing of passive or active infrastructure, obligations to conclude localised roaming access agreements, or the joint roll-out of infrastructures directly necessary for the local provision of services which rely on the use of spectrum, in compliance with Union law, where it is justified on the grounds that,

deleted

(a) the replication of such infrastructure would be economically inefficient or physically impracticable, and

(b) the connectivity in that area, including along its main transport paths, would be severely deficient, or the local population would be subjected to severe restrictions on choice or quality of service, or on both.

National regulatory authorities shall have regard to:

(a) the need to maximise connectivity throughout the Union and in particular territorial areas;

(b) the efficient use of radio spectrum;

(c) the technical feasibility of sharing and associated conditions;

(d) the state of infrastructure-based as well as service-based competition;

(e) the possibility to significantly increase choice and higher quality of service for end-users;

(f) technological innovation;

(g) the overriding need to support the incentive of the host to roll out the

infrastructure in the first place.

Such sharing, access or coordination obligations shall be subject to agreements concluded on the basis of fair and reasonable terms and conditions. In the event of dispute resolution, national regulatory authorities may inter alia impose on the beneficiary of the sharing or access obligation, the obligation to share its spectrum with the infrastructure host in the relevant area.

Or. en

Justification

Unnecessary and unpredictable sharing obligations should be avoided in favour of investment certainty. Compare the AM to Article 18.

Amendment 114

**Proposal for a directive
Article 62 – paragraph 1**

Text proposed by the Commission

Amendment

The Commission shall regularly review the Recommendation.

The Recommendation shall be reviewed at the latest by [transposition date]. The Commission shall thereafter regularly review the Recommendation.

Or. en

Justification

The review of the Recommendation is inextricably linked to other admissible AMs and is necessary in order to address conflicting rules.

Amendment 115

**Proposal for a directive
Article 62 – paragraph 3**

Text proposed by the Commission

3. National regulatory authorities shall, taking the utmost account of the Recommendation and the SMP guidelines, define relevant markets appropriate to national circumstances, in particular relevant geographic markets within their territory, in accordance with the principles of competition law. National regulatory authorities shall take into account the results of the geographical survey conducted in accordance with Article 22(1). They shall follow the procedures referred to in Articles 23 and 32 before defining the markets that differ from those identified in the Recommendation.

Amendment

3. National regulatory authorities shall, taking the utmost account of the Recommendation and the SMP guidelines, define relevant markets appropriate to national circumstances, in particular relevant geographic markets within their territory, in accordance with the principles of competition law. National regulatory authorities shall take into account the results of the geographical survey conducted in accordance with Article 22(1) ***and in particular the degree of infrastructure competition in those areas.*** They shall follow the procedures referred to in Articles 23 and 32 before defining the markets that differ from those identified in the Recommendation.

Or. en

Amendment 116

**Proposal for a directive
Article 64**

Text proposed by the Commission

Article 64

Procedure for the identification of transnational demand

1.

BEREC shall conduct an analysis of transnational end-user demand for products and services that are provided within the Union in one or more of the markets listed in the Recommendation, if it receives a reasoned request providing supporting evidence from the Commission or from at least two of the national regulatory authorities concerned indicating that there is a serious demand problem to be addressed. BEREC may also conduct such analysis if it receives a

Amendment

deleted

reasoned request from market participants providing sufficient supporting evidence and considers there is a serious demand problem to be addressed. BEREC's analysis is without prejudice to any findings of transnational markets in accordance with Article 63(1) and to any findings of national or sub-national geographical markets by national regulatory authorities in accordance with Article 62(3).

That analysis of transnational end-user demand may include products and services that are supplied within product or service markets that have been defined in different ways by one or more national regulatory authorities when taking into account national circumstances, provided that those products and services are substitutable to those supplied in one of the markets listed in the Recommendation.

If BEREC concludes that a transnational end-user demand exists, is significant and is not sufficiently met by supply provided on a commercial or regulated basis, it shall, after consulting stakeholders and in close cooperation with the Commission, issue guidelines on common approaches for national regulatory authorities to meet the identified transnational demand, including, where appropriate, when they impose remedies in accordance with Article 66. National regulatory authorities shall take into utmost account these guidelines when performing their regulatory tasks within their jurisdiction.

2. On the basis of BEREC guidelines referred to in paragraph 1, the Commission may adopt a Decision pursuant to Article 38 to harmonise the technical specifications of wholesale access products capable of meeting such identified transnational demand, when they are imposed by national regulatory authorities on operators designated with significant market power in markets where such access products are supplied,

as defined according to national circumstances. Article 38(3)(a) second subparagraph first indent shall not apply in such a case.

Or. en

Justification

The identification of transnational demand and transnational markets should take place within the normal framework for market analysis. The proposed process could ultimately prove to be extremely complex and lead to additional layers of regulation to what already provided at national/local level.

Amendment 117

**Proposal for a directive
Article 65 – paragraph 1 – subparagraph 3**

Text proposed by the Commission

Amendment

Where a national regulatory authority conducts an analysis of a market that is included in the Recommendation, it shall consider that points (a), (b) and (c) of the second subparagraph have been met, unless the national regulatory authority determines that one or more of such criteria is not met in the specific national circumstances.

deleted

Or. en

Amendment 118

**Proposal for a directive
Article 65 – paragraph 5 – point a**

Text proposed by the Commission

Amendment

(a) within five years from the adoption of a previous measure where the national regulatory authority has defined the relevant market and determined which undertakings have significant market power. Exceptionally, that five-year period

(a) within five years from the adoption of a previous measure where the national regulatory authority has defined the relevant market and determined which undertakings have significant market power. Exceptionally, that five-year period

may be extended for up to one additional year, where the national regulatory authority has notified a reasoned proposed extension to the Commission no later than four months before the expiry of the five years period, and the Commission has not objected within one month of the notified extension;

may be extended for up to one additional year, where the national regulatory authority has notified a reasoned proposed extension to the Commission no later than four months before the expiry of the five years period, and the Commission has not objected within one month of the notified extension. ***In the case of markets characterised by rapid change in technology and demand patterns at the retail level, the market analysis shall however be carried out every three years, subject to the same one-year extension possibility.***

Or. en

Justification

The five-year market review cycle would be too long in the case of highly dynamic markets, and an obligation for NRAs to conduct a full market review within a shorter timeframe, rather than just reacting in a more limited fashion to a request by an operator (as introduced in Art 66(6), is warranted where the environment is changing rapidly. Inextricably linked to other admissible AMs.

Amendment 119

Proposal for a directive Article 65 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. With effect from the expiry of the relevant time period, any obligations previously imposed shall automatically lapse where the national regulatory authority has not completed the subsequent analysis of the relevant market within the time period set out in paragraph 4 point (a), including any extension as provided for therein.

All national regulatory authorities shall assess the impact of this Directive within [six months from the transposition date]. That assessment shall determine whether it is necessary to review any designations of operators with significant market

power or obligations previously imposed on them in order to ensure that such designations and obligations comply with this Directive. Any amendment to a designation or an obligation shall only be made following consultation in accordance with Articles 23 and 32 or, where necessary, a new market analysis.

Or. en

Justification

In order to avoid uncertainty and lingering obligations that remain only because of delay in completing a market review, any previous obligations should lapse where the market review is not completed in the time required, including any extension. Furthermore, to give effect to this Directive sooner and in a uniform fashion across the Union, all NRAs should review existing obligations against the new legal framework set out herein promptly after the transposition date. Inextricably linked to other admissible AMs.

Amendment 120

Proposal for a directive Article 66 – paragraph 2

Text proposed by the Commission

2. Where an operator is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 65 of this Directive, national regulatory authorities shall be able to impose any of the obligations set out in Articles 67 to 75 and 77 of this Directive as appropriate.

Amendment

2. Where an operator is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 65 of this Directive, national regulatory authorities shall be able to impose any of the obligations set out in Articles 67 to 75 and 77 of this Directive as appropriate. ***In accordance with the principle of proportionality, a national regulatory authority shall only impose the minimum obligation or set of obligations considered necessary to make the relevant retail markets effectively competitive, and shall not impose obligations involving a higher degree of intervention if less burdensome obligations are sufficient to achieve that result.***

Or. en

Justification

In accordance with the principle of proportionality, as well as the protection of property and the right to conduct a business, obligations should be limited to the minimum necessary for the problem to be addressed. Inextricably linked to other admissible AMs.

Amendment 121

Proposal for a directive Article 66 – paragraph 6

Text proposed by the Commission

6. National regulatory authorities shall consider the impact of new market developments, such as in relation to commercial agreements, including co-investment agreements, ***which have been concluded or unforeseeably breached or terminated affecting competitive dynamics***. ***If these*** developments are not sufficiently important in order to ***determine the need to undertake*** a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations ***imposed*** on operators designated with significant market power in order to ensure that such obligations continue to meet the ***conditions in paragraph 4***. ***Such amendments*** shall only be ***imposed*** following consultation in accordance with Articles 23 and 32.

Amendment

6. National regulatory authorities shall consider the impact of new ***or planned*** market developments ***which are reasonably likely to affect competitive dynamics***, such as in relation to commercial agreements, including ***without limitation*** co-investment agreements ***and/or undertakings absent from any retail market for electronic communications services***.

National regulatory authorities shall do so:

(a) on their own initiative, taking account of the need for predictable market conditions, or

(b) on a reasoned request.

If the developments are not sufficiently important in order to ***require*** a new market analysis in accordance with Article 65, the national regulatory authority shall assess ***without delay*** whether it is necessary to review the obligations ***and amend any previous decision, including by withdrawing obligations or imposing new***

obligations on operators designated with significant market power in order to ensure that such obligations continue to meet the *requirements of this Directive, or whether to decide that no, fewer or less onerous obligations shall be imposed with respect to a planned development. Such decisions shall only be made* following consultation in accordance with Articles 23 and 32.

Or. en

Justification

The principle that NRAs shall consider relevant market developments should be extended to cover also planned such developments. The initiation of such a consideration and possible re-assessment of obligations imposed should not depend solely on the NRA but should also be triggered on a reasoned request. In order to discourage frivolous requests, the NRA is not bound to either accept or reject any specific relief sought, but can take a broader view. It should also be able to impose an administrative charge for the costs caused by a request.

Amendment 122

Proposal for a directive

Article 66 – paragraph 6 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

As a condition for considering a request by an operator designated as having significant market power for withdrawal of obligations imposed on it, national regulatory authorities may impose an administrative charge pursuant to Article 16 in order to meet the cost of considering the request.

Or. en

Justification

Inextricably linked to other admissible AMs.

Amendment 123

Proposal for a directive Article 71 – paragraph 1

Text proposed by the Commission

Only where a national regulatory authority ***concludes that the obligations imposed in accordance with Article 70 would not on their own lead to the achievement of the objectives set out in Article 3, it*** may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, in situations where the national regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, and would not be in the end-user's interest.

Amendment

A national regulatory authority may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, in situations where the national regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, and would not be in the end-user's interest.

Or. en

Justification

The deleted text is replaced by the generalised application of the principle that only the least onerous obligation necessary to address the problem at hand should be imposed.

Amendment 124

Proposal for a directive Article 71 – paragraph 2 – point d

Text proposed by the Commission

(d) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment ***with particular regard to investments in and risk levels associated with very high capacity networks;***

Amendment

(d) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment;

Or. en

Justification

The reference to very high capacity networks is moved to the new Title III of Part II.

Amendment 125

Proposal for a directive

Article 71 – paragraph 2 – point e

Text proposed by the Commission

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition and to sustainable competition based on co-investment in networks;

Amendment

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition and ***innovative commercial business models which support*** sustainable competition ***such as those*** based on co-investment in networks;

Or. en

Justification

In accordance with the need to provide regulatory flexibility to take into account e.g. voluntary agreements between operators, as stated in recital 166.

Amendment 126

Proposal for a directive

Article 72 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In determining whether or not price control obligations would be appropriate, national regulatory authorities shall take into account long-term end-user interests related to the deployment and take-up of next-generation networks, and in particular of very high capacity networks. In particular, to encourage investments by the operator, including in next-generation networks, national regulatory authorities shall take into account the investment made by the operator. Where the national regulatory authorities deem price controls appropriate, they shall allow the operator a

Amendment

To encourage investments by the operator, including in next-generation networks, national regulatory authorities shall take into account the investment made by the operator. Where the national regulatory authorities deem price controls appropriate, they shall allow the operator a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

Or. en

Justification

The reference to very high capacity networks is moved to the new Title III of Part II.

Amendment 127

Proposal for a directive

Article 73 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where a national regulatory authority imposes obligations relating to cost recovery and price controls on operators designated as having significant market power on a market for wholesale voice call termination, it shall set maximum symmetric termination rates based on the costs incurred by an efficient operator. The evaluation of efficient costs shall be based on current cost values. The cost methodology to calculate efficient costs shall be based on a bottom-up modelling approach using long-run incremental traffic-related costs of providing the wholesale voice call termination service to third parties.

Amendment

By [transposition date] the Commission shall, after having consulted BEREC, adopt delegated acts in accordance with Article 109 concerning single maximum termination rates to be imposed by national regulatory authorities on undertakings designated as having significant market power in fixed and mobile voice termination markets respectively in the Union.

Or. en

Justification

In order to avoid unjustified levels of charges and fragmented national approaches resulting in a call between the same points in different MS being charged differently merely depending on where it terminates, the Commission should set maximum fixed and mobile termination rates by the transposition date under a simplified mechanism relying on the costs of an efficient operator. Those maximum termination rates should not exceed the highest rates in force in any MS.

Amendment 128

Proposal for a directive Article 73 – paragraph 2

Text proposed by the Commission

2. *By [date] the Commission shall, after having consulted BEREC, adopt delegated acts in accordance with Article 109 concerning a single maximum termination rate to be imposed by national regulatory authorities on undertakings designated as having significant market power in fixed and mobile voice termination markets respectively in the Union.*

Amendment

2. *Those single maximum termination rates for fixed and mobile voice termination respectively shall be set as maximum symmetric termination rates based on the costs incurred by an efficient operator and shall comply with the criteria and parameters provided in Annex III. The evaluation of efficient costs shall be based on current cost values. The cost methodology to calculate efficient costs shall be based on a bottom-up modelling approach using long-run incremental traffic-related costs of providing the wholesale voice call termination service to third parties. When adopting such delegated acts the Commission shall take into account national circumstances which result in significant differences between Member States. The maximum termination rates in the first delegated acts shall not be higher than the highest rates in force in any Member State, after any necessary adjustment for exceptional national circumstances, [six] months before the adoption of delegated acts.*

Or. en

Justification

In order to avoid unjustified levels of charges and fragmented national approaches resulting in a call between the same points in different MS being charged differently merely depending on where it terminates, the Commission should set maximum fixed and mobile termination rates by the transposition date under a simplified mechanism relying on the costs of an efficient operator. Those maximum termination rates should not exceed the highest rates in force in any MS.

Amendment 129

Proposal for a directive Article 73 – paragraph 3

Text proposed by the Commission

Amendment

3. *When adopting these delegated acts, the Commission shall follow the principles laid down in the first subparagraph of paragraph 1 and shall comply with the criteria and parameters provided in Annex III.* **deleted**

Or. en

Amendment 130

Proposal for a directive Article 73 – paragraph 4

Text proposed by the Commission

Amendment

4. *In applying paragraph 2, the Commission shall ensure that the single voice call termination rate in mobile networks shall not exceed 1.23 €cent per minute and the single voice call termination rate in fixed networks shall not exceed 0.14 €cent per minute. The Commission shall take into account the weighted average of maximum termination rates in fixed and mobile networks established in accordance with the principles provided in the first subparagraph of paragraph 1 applied across the Union when setting the single maximum termination rate for the first time.* **deleted**

Or. en

Amendment 131

Proposal for a directive Article 73 – paragraph 5

Text proposed by the Commission

Amendment

5. *When adopting delegated acts pursuant to paragraph 2, the Commission shall take into account the total number of end-users in each Member State, in order to ensure a proper weighting of the maximum termination rates, as well as national circumstances which result in significant differences between Member States when determining the maximum termination rates in the Union* **deleted**

Or. en

Amendment 132

Proposal for a directive Article 73 – paragraph 6

Text proposed by the Commission

Amendment

6. *The Commission may request BEREC to develop an economic model in order to assist the Commission in determining the maximum termination rates in the Union. The Commission shall take into account market information provided by BEREC, national regulatory authorities or, directly, by undertakings providing electronic communications networks and services.* **deleted**

Or. en

Amendment 133

Proposal for a directive Article 74

Article 74

deleted

Regulatory treatment of new network elements

1.

A national regulatory authority shall not impose obligations as regards new network elements that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, if the following cumulative conditions are met:

(a) the deployment of the new network elements is open to co-investment offers according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

(b) the deployment of the new network elements contributes significantly to the deployment of very high capacity networks;

(c) access seekers not participating in the co-investment can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of regulated access maintained or adapted by the national regulatory authority;

When assessing co-investment offers and processes referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those offers and processes comply with the criteria set out in Annex IV.

Or. en

Justification

The Article is moved to the new Title III of Part II.

Amendment 134

Proposal for a directive Article 78

Text proposed by the Commission

Amendment

Article 78

deleted

Migration from legacy infrastructure

1. Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article 65 shall inform the national regulatory authority in advance and in a timely manner when they plan to decommission parts of the network, including legacy infrastructure necessary to operate a copper network, which are subject to obligations pursuant to Articles 66 to 77.

2.

The national regulatory authority shall ensure that the decommissioning process includes a transparent timetable and conditions, including inter alia an appropriate period of notice and for transition, and establishes the availability of alternative comparable products providing access to network elements substituting the decommissioned infrastructure if necessary to safeguard competition and the rights of end-users.

With regard to assets which are proposed for decommissioning, the national regulatory authority may withdraw the obligations after having ascertained:

(a) the access provider has demonstrably established the appropriate conditions for migration, including making available a comparable alternative access product enabling to reach the same end-users, as was available using the legacy infrastructure; and

(b) the access provider has complied with the conditions and process provided to the national regulatory authority in accordance with the present Article.

Such withdrawal shall be implemented in accordance with the procedures referred to in Articles 23, 32 and 33.

Or. en

Justification

The Article is moved to the new Title III of Part II.

Amendment 135

**Proposal for a directive
Part 3 – title -1 (new)**

Text proposed by the Commission

Amendment

**TITLE III: SPECIFIC PROVISIONS ON
VERY HIGH CAPACITY NETWORKS**

Or. en

Justification

This introduces the new Title III of Part II, focusing on aspects of particular relevance for very high capacity networks. It gathers the elements relevant to very high capacity networks in one accessible Title, and also suggests some additional provisions. All AMs under the new Title are inextricably linked to other admissible AMs.

Amendment 136

Proposal for a directive Article 78 c (new)

Text proposed by the Commission

Amendment

Article 78 c

Definition

'very high capacity network' means high speed electronic communications network which consists wholly or partly of optical fibre elements with sufficient capacity to allow unconstrained use of the network in terms of available down- and uplink bandwidth, resilience, error-related parameters, and latency and its variation. Network performance can be considered regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point.

Or. en

Justification

This revised definition incorporates the term "high speed" network from the Broadband Cost Reduction Directive. It increases technological neutrality. It is future-proof as it shifts the primary focus to the ability of the network to meet evolving demand by way of allowing unconstrained use. The AM is linked to the AM on recital 13, discussing expected demand requirements by 2025, and AM 136, tasking BEREC with issuing guidelines for network requirements thereafter.

Amendment 137

Proposal for a directive Article 78 d (new)

Text proposed by the Commission

Amendment

Article 78 d

Geographical surveys

1. In conducting a geographical survey pursuant to Article 22, national regulatory authorities may include a

three-year forecast of the reach of very high capacity networks within their territory, relying on publicly available information.

This forecast may include information on planned deployments by any undertaking or public authority, in particular to include very high capacity networks and significant upgrades or extensions of legacy broadband networks to at least the performance of next-generation access networks.

The information collected should be at an appropriate level of local detail and include sufficient information on the quality of service and parameters thereof.

2. National regulatory authorities may designate a "digital exclusion area" corresponding to an area with clear territorial boundaries where, on the basis of the information gathered pursuant to paragraph 1, it is determined that for the duration of the relevant forecast period, no undertaking or public authority has deployed or is planning to deploy a very high capacity network or has significantly upgraded or extended its network to a performance of at least 100 Mbps download speeds, or is planning to do so. National regulatory authorities shall publish the designated digital exclusion areas.

3. Within a designated digital exclusion area, national regulatory authorities may issue a call open to any undertaking to declare their intention to deploy very high capacity networks over the duration of the relevant forecast period. The national regulatory authority shall specify the information to be included in such submissions, in order to ensure at least a similar level of detail as that taken into consideration in the forecast. It shall also inform any undertaking expressing its interest whether the designated digital exclusion area is covered or likely to be covered by an NGA network offering

download speeds below 100 Mbps on the basis of the information gathered.

4. When national regulatory authorities take measures pursuant to paragraph 3, they shall do so according to an efficient, objective, transparent and non-discriminatory procedure, whereby no undertaking is a priori excluded.

Or. en

Amendment 138

Proposal for a directive Article 78 e (new)

Text proposed by the Commission

Amendment

Article 78 e

Access remedies

1. When considering the appropriateness of imposing any of the possible specific obligations pursuant to this Directive with respect to a very high capacity network, national regulatory authorities shall have particular regard to investments in and risk levels associated with such networks.

2. In determining whether or not price control obligations would be appropriate, national regulatory authorities shall take into account long-term end-user interests related to the deployment and take-up of very high capacity networks.

Or. en

Amendment 139

Proposal for a directive Article 78 f (new)

Article 78 f

Regulatory treatment of new very high capacity network elements

1. Without prejudice to the assessment by national regulatory authorities of co-investment in other types of networks, a national regulatory authority shall not impose obligations as regards new very high capacity networks that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, if the following cumulative conditions are met:

(a) the deployment of the new network elements is open to co-investment offers according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

(b) access seekers not participating in the co-investment can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of regulated access maintained or adapted by the national regulatory authority;

When assessing co-investment offers and processes referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those offers

and processes comply with the criteria set out in Annex IV.

Or. en

Amendment 140

Proposal for a directive Article 78 g (new)

Text proposed by the Commission

Amendment

Article 78 g

Migration from legacy infrastructure

1. Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article 65 shall inform the national regulatory authority in advance and in a timely manner when they plan to replace parts of the network, which are subject to obligations pursuant to Articles 66 to 77, with a very high capacity network.

2. The national regulatory authority shall ensure that the decommissioning process includes a transparent timetable and conditions, including inter alia an appropriate period of notice and for transition, and establishes the availability of alternative comparable products providing access to network elements substituting the decommissioned infrastructure if necessary to safeguard competition and the rights of end-users.

With regard to assets which are proposed for decommissioning, the national regulatory authority may withdraw the obligations after having ascertained:

(a) the access provider has demonstrably established the appropriate conditions for migration, including making available a comparable alternative access product enabling to reach the same end-users, as was available using the legacy

infrastructure; and

(b) the access provider has complied with the conditions and process provided to the national regulatory authority in accordance with the present Article.

Such withdrawal shall be implemented in accordance with the procedures referred to in Articles 23, 32 and 33.

Or. en

Amendment 141

Proposal for a directive Article 78 h (new)

Text proposed by the Commission

Amendment

Article 78 h

Demand aggregation

Member States shall not impose more onerous provisions, whether with respect to duration, interest rates or otherwise, on operator financing of the deployment of a very high capacity physical connection to the premises of an end-user than they do on financial institutions, including where such operator financing is by way of instalment contract.

Or. en

Justification

This is a version of the proposed Art 98(1) second subparagraph of the Directive, focussed on deployment of very high capacity network connection and ensuring equivalence between financing of the connection by the operator and financial institutions.

Amendment 142

Proposal for a directive Article 78 i (new)

Text proposed by the Commission

Amendment

Article 78 i

Technical regulations on electromagnetic fields

The procedures under Directive 2015/1535 shall apply with respect to any draft Member State measure that would impose more stringent requirements with respect to electromagnetic fields than provided for in Council Recommendation No 1999/519/EC.

Or. en

Justification

This AM aims to ensure, subject to any necessary further technical work, that the well-established process under Directive 2015/1535 (which codified Directive 98/34) on a procedure for the provision of information in the field of technical regulations and of rules on Information Society services would also apply with respect to protection against electromagnetic fields. This provides transparency as MS measures in this respect (which may also constitute an obstacle to trade) are notified to other MS and the Commission, and enables the Commission and other MS to comment. It would thereby also allow an overview at Union level of the implementation of Council Recommendation No 1999/519/EC.

Amendment 143

**Proposal for a directive
Article 78 j (new)**

Text proposed by the Commission

Amendment

Article 78 j

BEREC guidelines on very high capacity networks

By 31 December 2025, and thereafter every [three years], BEREC shall, after consulting stakeholders and in close cooperation with the Commission, issue guidelines on the criteria a network has to fulfil in order to meet demand for unconstrained use by all categories of users to assist national regulatory authorities on the consistent

implementation of their obligations under this Title. The national regulatory authorities shall take those guidelines into utmost account. Such criteria shall not be below a downlink speed of at least [].

Or. en

Amendment 144

Proposal for a directive Article 116

Text proposed by the Commission

Amendment

Article 5 of Decision 243/2012/EU is repealed with effect from [...].

Or. en

Justification

Art 5 (Competition) of Decision 243/2012 (RSPP) is reproduced and amended in Art 52(2) of this Directive and it follows from the internal logic that it should be repealed as a technical matter to avoid confusion.

EXPLANATORY STATEMENT

This is a decisive moment to maximize the opportunities that more advanced digital technologies bring. Since the 2009 review, the market has dramatically changed. New players have emerged as consumers and businesses increasingly rely on data services.

Today's smart cars, cities, energy, industry, health, banking, education, research, public services etc need increased connectivity and wavelengths, that means very high capacity fixed and mobile networks (VHCN). The framework is vital for making the EU a gigabit society built on a backbone of connectivity. But the necessary investment is estimated to €500-600 billion; up to 90% must be provided by the private sector. Crucially, that requires a framework ensuring predictability and rewarding risk-taking and long-term investment. Thus, the Commission proposal to add infrastructure at the core of the framework is the right approach.

Investment, competition and regulation must form a virtuous circle for the rollout of ubiquitous VHCN and 5G broadband infrastructure. This requires the full development of the Digital Single Market, leveraging the power of a €16.5 trillion economy, representing 23% of global GDP, 500 million consumers, and a strong global competitive industrial sector. These are the necessary assets and economies of scale for cloud computing, big data, data-driven science, robotics, artificial intelligence and the internet of things to fully develop.

With VHCN, the EU will be perfectly equipped to be a data economy leader, the key competitive advantage of this century.

It is not wishful thinking, it is a real opportunity.

SCOPE & OBJECTIVES

a) Very High Capacity Networks

The role of electronic communications as an enabler of the economy has hugely increased. Data services replace traditional services as key products for all users. This means that the sector must meet increased demand and socio-economic development needs.

The Rapporteur supports introducing deployment and take-up of VHCN, including rollout of mobile networks using enhanced air interfaces and increased density, as one of the general objectives of the framework, on par with the existing competition, internal market and end-user benefit objectives. She embraces this aim.

The Rapporteur proposes to add clarity and enhance the visibility of the tools specifically addressing VHCN via a new Title of the Code.

The VHCN definition should be changed to increase technological neutrality and make it more future-proof, by shifting the primary focus to the dynamic ability of networks to meet demand for unconstrained use as it evolves. This links to performance parameters that are capable of meeting the connectivity goals by 2025 and to BEREC guidelines for requirements thereafter.

b) Electronic communication services (ECS)

Today, "OTT" services, such as Voice over IP, messaging etc substitute for traditional voice telephony, SMS etc.

This extraordinary evolution has very positive effects for competition, innovation and growth. It also presents challenges: the new services are either de facto not subject to the current rules, or they are not consistently applied across the EU. Therefore, the definitions should be clarified to build on a functional approach from the user perspective. The Commission's proposed definition of ECS (Art 2(4)) provides a first balanced approach for debate.

c) General authorisation

The general authorisation ensures freedom to provide electronic communications networks and services across the EU. No ECS should be deprived of that benefit and incur the risk of being subject to 28 different regimes.

Therefore, the Rapporteur proposes to include all ECS, while taking account of their diversity and the innovative character of many of them. This calls for a threshold excluding small services from unnecessary burdens. Borrowing from the competition law concept of "community dimension", that could exclude ECS with a limited EU presence and turnover from notification obligations, while allowing them to benefit, should they so wish, from the general authorisation in Member States requiring notification at a nominal fee.

ACCESS

a) General approach

The framework rests on three main objectives: competition, internal market and end-user interest. That remains guiding principles for the Code. The competition approach, based on significant market power (SMP), has proven successful in the liberalisation process since the 90ies and must remain at the core of the Code. The complete toolbox of remedies, from transparency obligations to functional separation, must remain available to National Regulatory Authorities (NRAs).

However, the Rapporteur embraces the proposal of the Commission that the current objectives are encompassed by the new VHCN connectivity objective. Consequently the new objective makes the Code instrumental to achieve a more predictable investment environment, including through further measures to overcome deployment challenges.

Ex ante regulation is not an end in itself - proportionality requires imposition of access obligations only if retail markets would otherwise not be effectively competitive, similarly to the current framework.

The Rapporteur supports market solutions by way of commercial agreements, such as co-investment or access agreements, where positive for competition.

b) Ladder of remedies

Proportionality and the Charter protections of property and freedom to conduct a business, demand that obligations be limited to the minimum necessary for the problem addressed. At each stage of the assessment, before an NRA imposes any additional, more burdensome, remedy, it should thus consider its necessity for the retail market to be effectively

competitive, all relevant aspects taken into account.

c) Market review

The proposal amends the current market analysis procedure i.a. by extending it from 3 to 5 years. The extra years may not achieve much regulatory stability for investments with very long payback periods, and could result in regulation persisting beyond its "best by" date, with negative effects on investments.

The Rapporteur thus deems the 5-year review cycle as too long for highly dynamic markets, and proposes an obligation for NRAs to conduct a full review in a shorter timeframe for such markets.

In addition, the flexibility element introduced by NRAs ex officio considering market developments should be matched by an obligation for NRAs to re-assess on a reasoned request by an operator.

To avoid uncertainty and lingering obligations due to delay in completing a market review, any prior obligations should lapse if the market review is not done in time. To give effect to the Code sooner and in a uniform fashion across the EU, all NRAs should review existing obligations against the new legal framework promptly after the transposition date.

d) Geographical surveys

Geographical surveys of networks are valuable instruments already at NRAs disposal. Imposing an obligation on operators to present investment forecasts, with a potential for penalties, is disproportionate and incognisant of market-driven investment decisions. The Rapporteur proposes to delete those provisions.

e) Symmetric obligations

Expanding symmetric obligations in certain circumstances, to facilitate alternative network deployment in sparsely populated areas where infrastructure competition is unlikely, is useful and supported by the Rapporteur. However, symmetric obligations should not apply if the economics of the original deployment would be compromised.

f) Termination rates

To avoid unjustified levels of charges and fragmented approaches resulting in differing international call costs merely due to where it terminates, the Commission should set maximum fixed and mobile termination rates under a simplified mechanism taking into account the highest rates in force in any Member State.

g) "Double-lock"

Introducing a "double-lock" on remedies has considerable logic. The Commission currently has a veto over NRAs market definition and assessment of SMP, both based on the application of European competition law and economic principles, as is the framework overall. The ultimate aim is to abolish ex ante regulation once competition is assured, leaving the market regulated by competition law alone. The Commission would then have full powers also over remedies.

SPECTRUM

a) General approach

Spectrum is an essential resource for the provision of electronic communications relied on by an increasing numbers of actors. Future demand will increase exponentially. Connectivity for 5th generation mobile will require up to 56 GHz of additional spectrum. This calls for timely release of spectrum and targeted improvements in its management.

The Rapporteur thus supports the proposals to ensure advanced connectivity by timely release of spectrum, simplified regulatory intervention, greater consistency and predictability in assignment, and more responsiveness to spectrum management challenges.

b) Investment certainty

The 30-year minimum duration proposed by the Rapporteur ensures return on investment and provides predictability to incentivise more rapid rollout of advanced networks. In order to avoid speculation risk, the increased duration is flanked by more rigorous requirements and means to ensure that spectrum is used effectively and efficiently, through 'use it or lose it' mechanisms.

To further guarantee optimal use and investment certainty the Rapporteur proposes amendments to ensure that conditions to individual rights are not changed without agreement, delete undue sharing obligations, strengthen spectrum trading, and ensure that fees and reserve prices are based on a proper assessment of market conditions. To guarantee a competitive spectrum landscape and avoid inconsistent approaches, the guidelines for market analysis and the assessment of significant market power should be taken into account also in this context.

c) Access to public buildings

To ensure that public buildings, which are socio-economic enablers paid via taxes, can be used for VHCN the Rapporteur proposes to add an access obligation for deploying small-cells, to complement the Cost Reduction Directive.

d) RSPG

The Rapporteur reinforces the role of the Radio Spectrum Policy Group (RSPG) to strengthen cooperation between Member States on spectrum management more generally, not just with respect to resolving harmful interference. This enhanced role of the RSPG requires it to be created in the Code itself, and the secretariat (currently provided by the Commission) should be discussed.